

131013

E S S A Y S

ON THE

O R I G I N

O F

SOCIETY,

LANGUAGE,

PROPERTY,

GOVERNMENT,

JURISDICTION,

CONTRACTS,

AND

MARRIAGE.

INTERSPERSED WITH

I L L U S T R A T I O N S

FROM THE

GREEK AND GALIC LANGUAGES.

By JAMES GRANT, Esq. ADVOCATE.

L O N D O N :

PRINTED BY B. MILLAN, HENRIETTA-STREET, COVENT-GARDEN ;

FOR G. G. J. AND J. ROBINSON, PATER-NOSTER-ROW ;

AND

C. ELLIOT, EDINBURGH.

M DCC LXXXV.

ESSAYS

ON THE

ORIGIN

SOCIETY, LANGUAGE, PROPERTY, GOVERNMENT, AND MARRIAGE, JURISDICTION, CONTRACTS

INTERFERED WITH

ILLUSTRATIONS

FROM THE

GREEK AND LATIN LANGUAGES

BY JAMES GRANT, Esq. ADVOCATE.



PRINTED BY D. NEILSON, NEWCASTLE, COVENT-GARDEN.

FOR G. C. J. AND J. ROBINSON, PATERNOSTER-ROW.

AND

C. ELLIOT, EDINBURGH.

M DCC LXXXV.

C O N T E N T S.

	Page
O RIGIN of Society - - -	I
Origin of Language - - -	27
Origin of Property - - -	63
Origin of Government - - -	73
Origin of Jurisdiction - - -	107
Of Contracts - - -	157
Origin of Marriage - - -	189

ERRA-

C O N T E N T S
E R R A T A.

Page 84, lines 5 & 6, *For*, were made the chief, *read*,
were made by the chief:

— 169, l. 21 & 22, *For*, by the obligee, as a secu-
rity of performance of his engagement to the
obligor, *read*, by the obligor, as a security of
performance of his engagement to the obligee.

O R I G I N
O F
S O C I E T Y.

“AND the Lord God planted a garden east-
ward in Eden; and there he put the
“man whom he had formed: and out of the
“ground made the Lord God to grow every
“tree that is pleasant to the sight, and good
“for food*.”

“AND God said, Behold, I have given you
“every herb bearing seed, which is upon the
“face of all the earth; and every tree, in the

* Genesis, ch. ii. v. 8, 9.

“ which is the fruit of a tree yielding feed, to
“ you it shall be for meat*.”

IN all that admirable variety of appearances which Nature exhibits to our view, the eye of a just observer must ever recognise that beautiful simplicity and economy which uniformly pervade her works.

ONE man and one woman were sufficient to people the earth. The creation of more persons of the human species than one male and one female, who were under the special care of the Divine Being, was unnecessary.

THE first man and woman must have been formed in full possession of those instincts, which lead to self-preservation and the propagation of the species. Having come out of the hand of the Creator perfect in their kind, they unerringly obeyed the laws of their nature: they ate of

* Genesis, ch. i. v. 29.

the fruits of the earth, which grew in profusion around them: they increased and multiplied. While they remained in the garden of Eden, they were secure from the attacks of ferocious animals: the bounties of Nature gratified in abundance their appetite for food: there existed not, as yet, any situations or circumstances to call forth the display of those arts of contrivance and ingenuity which the human mind puts in practice in the progressive stages of society.

PRIMEVAL Man, unassailed by the anxieties which a scanty provision of food creates, obeyed the dictates of his nature without control: he fed, he slept; or, incited to action by the native enjoyment which is felt in the exercise of the members of the body, he sported in innocence, and gratified the social disposition of his kind.

IN such happy state it was not the lot of humanity long to continue. Man received from

the Author of Nature powers and faculties, which in his fallen condition were not to lie dormant, but must be exercised. Himself the most defenceless of all animals, must have fallen an easy prey to the ferocious beasts of the field, whom Nature had sufficiently furnished with the necessary instruments for providing the means of subsistence; had armed with weapons for their defence, and the destruction of their enemies; among whom Man must early have held an eminent station. His ingenuity could not, therefore, have long remained in a state of rest: the talents of his mind must have been early exercised for his own preservation. A sense of danger must have given occasion to the first exertion of his inventive powers. His apprehensions were not limited to the security of his own person alone: the infant newly come into the world would in a peculiar manner require his care and protection. He must have provided a place of security for the mother and the offspring: both must have been preserved from the

the

the attacks of animals of prey ; and the tender frame of the latter must have been defended from the noxious influence of nocturnal dews and inclement weather.

IN warm climates, the leaves of trees afforded the readiest means for clothing the primeval race. Moses says of our first parents, after they had eaten of the forbidden fruit, " And the eyes of them both were opened, and they knew that they were naked : and they sewed fig-leaves together, and made themselves aprons *." In cold regions more durable vestment must have been invented.

THE first occupation of the human race was not of a laborious kind. Their wants were few : their appetites were simple, and easily gratified. In those tracts of the earth which are more peculiarly favoured with the presence

* Genesis, ch. iii. v. 7.

of the sun's genial rays, the food of Man grew in profusion before his eyes: prepared by the hand of Nature, it required no degree of human art to make it palatable. Like all other granivorous animals, the human species herded together, and fed in common. The air which they breathed, the water which they drank, the food which they ate, were all equally the bounties of Nature, and were indiscriminately enjoyed in the state of primeval simplicity.

THE happiest climates are not blessed with a constant sun and a serene sky. The grateful light periodically withdraws its cheering influence: Man finds himself enveloped in darkness; that season in which the fierce tribes of carnivorous animals fall forth from their dens in search of their prey. Man must, therefore, have very early employed his art in building a sufficient fence against such dangerous enemies, or have taken the benefit of receptacles already prepared by Nature for his nightly habitation:

Proque

Proque domo longis spelunca recessibus ingens
Abdita, vix ipsis invenienda feris *.

MAN, advanced in refinement of manners, and practising those arts of improved civility and studied policy which link together the subjects of great states, nations, and empires, cannot easily quit his artificial station, and descend to the level of his primeval ancestors. He is apt to consider the accounts given of early societies of mankind living in caves, in the holes of rocks, or hollows of trees, as the effusion of poetical fancy, as the offspring of the vain credulity of fabulous historians, or as the invention of travellers who delight in the relation of marvellous things. But the philosophic enquirer will not hastily reject the testimony of authors recounting facts relative to the original state of Man, because they are inconsistent with the train of his experience in improved society; or because it may be considered

* Ovid. 1. Fast.

as incompatible with the elevation and dignity of station which the human species are observed to hold among all sublunary beings, to be assimilated to the beasts of the field, herding together, cohabiting promiscuously, feeding in common upon the flesh of other animals, or upon fruits, roots, and herbs, without any regular notion of religion, government, arts, or property.

“ MISERET atque etiam pudet æstimantem,
“ quam sit frivola animalium nobilissimi origo*.”

It is, however, no less unwise than unphilosophical, to give way to so painful a feeling upon the subject of the original state of Man's existence, whether he is considered in his individual or aggregate capacity. All things are the work of the Supreme Author of the Universe: from the energy of his power every being derives his existence.

* Plin. Nat. Hist. lib. vii. cap. 7.

Ab Jove principium Musæ, Jovis omnia plena *.

THERE is no property more remarkable in the constitution of Man, than the versatility of his genius, and the facility with which he accommodates himself to the circumstances of his condition. He is born in a society more or less numerous, upon which there is already stamped a certain form. He is not the author or contriver of his own lot. External circumstances exist independently of him : to these he bends his will, or puts in action his arts of contrivance to fashion them to his convenience. In this occupation his inventive powers and various talents are conspicuously displayed. Hence a diversity in situations and conditions must necessarily produce a diversity in manners and customs ; and adventitious circumstances of a physical nature may justly lay claim to a confi-

* Virg. Ecl. iii. 60.

derable share of influence in the formation of national characters.

THE North-American Indian is a superior animal to the Esquimaux. This superiority arises not from any partiality of Nature in favour of the Indian warrior : it must be ascribed to the difference of their condition and mode of subsistence, which must affect, if not determine, their manners and characters.

THE Esquimaux differs from the North-American Indian, no less in manners than in size and shape. The former is low of stature, round-faced, plump, and chubby. The latter is larger in size, straight, thin, and bony. The Esquimaux is sportful, and expresses a childish joy at new objects. The Indian appears with a grave countenance and stately deportment : his demeanour is expressive of dignity and pride. The former feeds upon seal's flesh, fish, and blubber ; and although he exhibits great skill and

and ingenuity in the management of his little vessel at sea, his food is procured without those bodily exertions which qualify him for warlike contention with the latter, who practises a high degree of cunning, address, and manly activity, in destroying the game which is his chief fund of subsistence.

THE inhabitants of the colder regions of the globe are found universally to be more active beings than those of hot climates. The former are jealous of encroachments on their natural freedom; they are impatient under usurpation of power: while the latter, naked and improvident, bask in the rays of the sun; or, in the cooler shade, indulge in indolence and listless inactivity.

THE spontaneous productions of the earth long furnished the inhabitants of the middle regions of the globe with food in abundance; while the natives of climes situated nearer the polar extremes were early forced to roam over

forests and deserts in pursuit of the means of supplying their daily wants. Such diversity of occupations must necessarily have produced a variety in the manners and customs of different races of men, and have early stamped on different tribes or societies of mankind distinct marks of variety of character.

IN taking a view of the rude tribes of whom either laudable curiosity or prospects of gain have procured information, one general trait may be observed to run throughout the whole of them. The Asiatic, the African, the American, the European barbarian, when not stimulated by appetite for food, or by motives of action which flatter his vanity and pride, discovers a fondness for idleness and repose. All have their sports, their dances, and their feasts; but no laborious exertion, no enterprize of difficult or dangerous execution, are undertaken, from the abstract consideration, that sloth and indolence are vices, or that activity and industry are virtues.

virtues. The human race existing in the earliest states of society have with reason been compared to the canine species, who spend their time in sleep and indolence, when not engaged in warfare, in sportive exercise, or in procuring food. To render Man active, his affections must be touched. He exerts himself, when roused by his desires: while his passions continue in a state of rest, his excellencies and abilities will remain undiscovered.

THAT idleness constitutes a chief part of the character of a rude people, is a proposition the truth of which is sufficiently confirmed by antient and modern observation. "If we contemplate
" a savage nation," says Mr. Gibbon, "in any
" part of the globe, a supine indolence and a
" carelessness about futurity will be found to
" constitute their general character."

TACITUS, in his character of the antient Germans, observing their love of idleness, wonders

ders how they should at the same time seem to hate quiet and repose: "Mira diversitas naturæ, " ut iidem homines sic ament inertiam, & oderint " quietem *." This admirable historian's character of the Germans is applicable to every people living in a rude state of society, and inhabiting those tracts of the earth where sustenance is to be procured by dexterity, address, and enterprize.

THE occupation of hunting the wild beasts of the field, is an emblem of war among the human race: it is often attended with danger, and frequently calls forth great exertions of mind and body. The same instruments are used in hunting, which are employed in contest with the human species. The most valuable qualities are those which serve to procure maintenance for the tribe. The person most eminently possessed of those qualities draws most pow-

* Taciti Germ. cap. xv.

erfully

erfully towards him the esteem and admiration of the society to which he is attached ; and, in the day of warlike contention, will, by universal consent, be dignified with the title of Chief or Leader. It is the consideration of utility, which may be referred to the principle of self-preservation, that, in times of danger, raises one member of a tribe into a station elevated above his fellows. In proportion as tribes multiply and increase, the feelings of self-preservation in each are alarmed. Their hunting-grounds are limited only by the utmost range of their excursions in search of their game. In this necessary occupation the members of different tribes may encounter ; fears of encroachments will on either side prevail ; apprehensions about the means of subsistence arise ; the seeds of dissension are sown, which grow up into the most cruel enmity and rancour :

Tum magis increment animis discordibus iræ.

MAN,

MAN, however, is not born with a pre-determined disposition to hate his species. When he comes into the world, the tender care of the mother must be exercised to preserve him from perishing. Offices of kindness and affection attend his infant years. He is raised to manhood by the bounty of those around him. All persons of his species whom he is accustomed to behold, are his benefactors: his experience is uniformly connected with the beneficence of his kind. Actions of benevolence must produce correspondent affections in the mind; and these will serve to determine the human character. Man is therefore not the enemy of man, and a state of nature is not a state of war.

MAN, on whatever spot of the earth he was first planted, must have been plentifully supplied with food: as his family increased, they must have traversed over a larger tract of ground in search of the means of subsistence. A certain
space

space of territory could afford food but for a definite number of people. Their situation would soon lead them to discover the convenience of separating into lesser bands, and of removing into more distant regions ; but still they would herd together in such numbers as should be sufficient to afford security against the attacks of the ferocious animals of prey which they should have occasion to encounter.

THE human species must have lived at a very early period in a state of war with the noxious animals of the field : their ingenuity must have been early called forth for their destruction. The weapons which they had invented for defence and preservation against those fierce enemies, they could have had no motive to direct against one another, while the territory they were wont to traverse afforded sufficiency of food for their maintenance. The multiplication of the species begot those fears and apprehensions which served to link together mankind in the form of hordes

D

or

or tribes ; each being joined together by that strongest motive of political union, self-preservation. It was from necessity that neighbouring tribes became what may be termed natural enemies, actuated by a never-ceasing jealousy, or relentless hatred.

THE relative situation of rude tribes to each other, may easily account for that seeming inconsistency of character ascribed to the antient Germans.

THE most expert hunter, or, in other words, the most successful provider of the means of subsistence, easily gained the greatest share of praise and esteem ; and as the public good is the predominant principle of action, real merit never failed to meet with its just reward ; which consisted in exaltation to the chief command in the day of battle, or enterprize of danger. Feats of agility and exploits of difficult execution are held to be necessary to the safety of the community.

munity. War against their own species, or against the beasts of the field, affords primitive societies the only occasion for the exertion of those talents and abilities which gain esteem and confidence, and gratify the ambition and pride of rude men, by raising them to the rank of great warriors in the day of danger.

PRIDE, or an inordinate degree of self-esteem, is a predominant feature in the character of savage man: a rude dignity of manner and loftiness of air mark his gait and deportment. A man who depends upon his own personal activity and prowess, and is in the daily habits of victory and conquest in procuring the means of subsistence, naturally fancies in himself qualities of excellence and superiority; and as, in the common affairs of life, he requires not the aid or favour of any of his fellow-members of the tribe, he feels himself free and independent, and therefore is naturally endued with that high sense of self-esteem which constitutes the passion of pride.

ANTIEN authors testify the fondness of rude people for warfare: when they had no wars to engage their attention at home, they went in search of other nations engaged in warlike contests*.

THE like disposition is observed in the American Indians. An individual will make a solitary excursion of many days journey, through trackless woods, or over mountains covered with snow, in pursuit of an enemy or a wild beast; and when he returns home, like the beast of prey, becomes a sluggard, passing his time in sleep and indolence until roused to action by a fresh expedition of difficulty and danger†.

CONSTANT labour, such as occupies the time of the great body of mankind in civilized society,

* Taciti German. cap. xiv. Ammianus Marcellinus, lib. xv. c. 12. Cæsar de Bello Gallico, lib. iv. c. 1.

† Carver's Travels, p. 298.

would,

would, to the imagination of a primitive man, figure as a greater evil, and in fact prove a more intolerable grievance, than the most cruel death. The savage and barbarian are habituated to great exertions and indolence by turns. War being the only scene in which the talents and abilities which they most highly esteem can be displayed, it is no wonder they should seek for distinction where alone it is to be found. The utility of warlike exercises calculated for the defence and safety of the community, served to feed the flame of admiration for dexterous achievements; and the most successful slayer of men was the most conspicuous object of praise. “ And it came to pass as they came, when David “ was returned from the slaughter of the Philistines, that the women came out of all cities “ of Israel, singing and dancing to meet King “ Saul, with tabrets, with joy, and with instruments of music. And the women answered “ one another as they played, and said, Saul “ hath

“hath slain his thousands, and David his ten
“thousands *.”

THE discoveries which have been made in modern ages, have led us into an acquaintance with varieties of condition in which the human species are found to exist. Mankind appear in all situations divided into tribes, herding together, subsisting in distinct communities, who understand separate interests. They have a sense of common danger: wars and dissensions prevail among them: they appear armed for each other's destruction: their breasts are, in times of contention, filled with the most implacable animosities, which produce the most rancorous cruelties.

THIS mode of life could not have been the original and natural state of Man. There must

* 1 Samuel, chap. xviii. v. 6, 7.

have

have existed a period when the whole human race lived in amity together; when as yet no distinction of warlike tribes was known; when no idea of separate interests had found place in the human mind. While Nature, without the exertion of art or industry, had furnished food sufficient to supply the wants of the whole human species, the means of subsistence were enjoyed by all in common: notions of separate interests could not have had existence. Mankind must have lived in a state of general concord, until pressed by wants which they found not ready means to supply. The existence of all the members of the community living in a body became then incompatible. Branches naturally issued from the main stock. Thus colonies were sent forth, and the earth was peopled. Mankind associated from a principle of natural affection towards the species. Their union was rendered firm and stable, from a principle of fear and self-preservation.

SOCIETY

SOCIETY presents a variety of appearances, through its successive stages from rudeness to refinement. What is termed the savage state of society is held by philosophers to be the first and most natural to primeval Man. The marks by which this state is distinguished are, the occupation of hunting or fishing to procure the means of subsistence, or the feeding upon the spontaneous productions of the earth, and ignorance of the nature of exclusive or private property in individuals.

AN illustrious author* affirms, that a general state of promiscuous commerce among the sexes never existed but in the imagination of poets. Several circumstances, however, natural to the state of primeval society, afford grounds for doubting the justice of this assertion. It appears to be more than probable, that a state of pro-

* Dr. Robertson's History of America.

promiscuous commerce among the sexes made part of the original mode of social existence; and that the union of the sexes by exclusive ties, was a departure from the first and most natural state of human society. A state of promiscuous commerce among the sexes we should be inclined to hold, also, as one of the distinguishing marks of primeval society.

THERE are qualities belonging to the human species, which are universal properties of their nature, and sufficiently distinguish them from all other animals. One of these properties in Man, and which constitutes a well-marked distinction, is LANGUAGE.

ORIGIN OF SOCIETY

With some reserve, however, it is not possible to say that the original mode of social organization was that of the family. It is probable that a large number of the early human communities were of the type of the family, but it is not possible to say that this was the original mode of social organization. A large number of the early human communities were of the type of the family, but it is not possible to say that this was the original mode of social organization.

There are many other points to be considered in connection with the origin of society. One of the most important is the question of the origin of the family. It is probable that the family was the original mode of social organization, but it is not possible to say that this was the original mode of social organization.

ORIGIN

O R I G I N

O F

L A N G U A G E.

MAN is distinguished in a peculiar manner from the brute creation by his voice, and the various modulations of which it is capable. His organs of articulation display an admirable variety of powers, which no other species of animal appears to possess. These powers were bestowed on him to answer the purposes of his nature. By their means he communicates thoughts, intelligence of which can be conveyed with precision neither by features, countenance, nor gesture.

THE first language, or vocal expression, would consist of simple sounds, the significancy of which

28 O R I G I N O F L A N G U A G E .

would be determined by a particular tone of voice, modulated by the passion or feeling of the mind which excited vocal utterance.

It is found from experience, that different passions produce different tones and modulations of voice. These, whether consisting of simple or articulate sounds, constituted the elementary parts of language, and laid the foundation of that artificial superstructure, which mankind in all situations have formed for the purposes of communicating to one another a knowledge of the feelings and operations of their minds.

If there is now existing an original language uncorrupted by foreign admixture, it will be found, upon examination of its roots and combinations, to contain an authentic record of the original manners of primeval society, of their customs, notions of right and wrong, and their mode of social life.

IT

IT is not the intention of this Essay, to enter into any elaborate disquisition on the origin of language. A subject which has occupied the attention of men of the greatest philosophical ingenuity and abilities, could derive little additional elucidation from our best endeavours. We shall therefore content ourselves with taking notice of some roots, combinations, and derivations of words in a primitive and still living language, which tend to throw some light upon the original condition of Man, and to mark the train of his ideas in his primeval state of existence.

THE Galic language, spoken by the Caledonians, or, as they are now called, the Highlanders of Scotland, and by the descendants of the antient inhabitants of Ireland, it is well known, is a dialect of the Celtic language, which was at a remote period spoken by the inhabitants of a considerable part of this globe. That
this

this dialect of the Celtic still preserves its original purity, may reasonably be presumed from the circumstance, that the Caledonians have remained to modern times an unmixed people. The subjection of their country, though it might serve to gratify the minds of vain and ambitious conquerors, could furnish no strong allurements for the establishment of settlements. The barrenness of the soil presented no flattering temptations for fixing a permanent residence. The difficulties of encountering a warlike people inhabiting a country which every where presented lakes, rivers, rocks, woods, and mountains, were sufficient to cool the ardour of even Roman conquerors; who, dreading the hazard, or seeing the unprofitableness, of accomplishing the design of conquest, held it more expedient to build fortified walls, as well for the preservation of the provinces which they had subdued, as for repelling the incursions of the natives, whose spirit they could not reduce to obedience.

IT

IT is true, that the Danes and Norwegians made settlements in the western and northern islands of Scotland; but the language of the Caledonians could not have been affected by the incursions of the northern nations, who never had made any settlements in Caledonia properly so called.

THAT the Galic is an original language, can be proved by the most satisfactory and demonstrable evidence. It is not derived from any other language, being obviously reducible to its own roots. Its combinations are formed of simple words of known signification; and those words are resolvable into the simplest combinations of vowels and consonants, and even into simple sounds.

IN such a language, some traces, it may be expected, will be found, of the ideas and notions of mankind living in a state of primeval simplicity; and if so, a monument is still preserved of
the

the primitive manners of the human race, while as yet under the guidance of simple nature, without any artificial restraint or control.

SILENCE naturally accompanies a tranquil state of mind: the agitations of passion as naturally produce vociferation and utterance of sound. If various passions produce various modifications of vocal expression or sound; and if particular modifications of sound serve to convey, from one mind to another, intelligence of particular passions; it may be concluded, that those modified sounds are the primary language of nature, in the constitution of which no artificial means were used for marking expression with a determinate signification.

THE vowels *A*, *E*, *I*, *O*, *U*, pronounced in Scotland in the same manner as they are in Italy, are all significant sounds with the descendants of the Caledonians. *A* is a sound, uttered with loud vociferation, to cause terror. *E* is an
excla-

exclamation of joy; *I*, of dislike; *O*, of admiration; and *U*, of fear; also of grief, modified by a graver tone of voice.

SUDDEN sensations of heat, cold, and bodily pain, are expressed by articulate sounds, which, however, are not used in the language to denote heat, cold, or bodily pain. Sudden sensation of heat is denoted by an articulate exclamation, *Hoit*; of cold, by *Id*; of bodily pain, by *Oich*. The simple cries are generally, if not always, followed by articulate sounds; as, *A, Ab; E, Ed; I, Ibh; O, Obh; U, Ubh*. The letters *bh* sound like *v*. All these sounds, both simple and articulate, may be called interjections, being parts of speech which discover the mind to be seized with some passion. We doubt if any of the modern improved languages of Europe present so great a variety of interjections, or sounds which in utterance instantaneously convey notice of a particular passion, bodily or mental feeling. Although the sounds, simple and arti-

F

culate,

culate, enumerated above, have not all been adopted or preserved as significant words, some of them still remain as words or sounds of marked signification.

THE pronouns *He* and *She* are expressed by the simple sounds, or vowels, *E* and *I*; and these serve as regular marks of the masculine and feminine genders. A neuter gender being unknown, every object is in a manner personified in the application of these pronouns.

DISTINCTLY varied sounds having been once employed by primitive Man to denote the genders of living objects, he naturally applies them to inanimate things. Language advances from sterility to copiousness by slow degrees. The invention of a word to denote a neuter gender, belongs to an improved understanding. It is probable that the *τὸ* of the Greeks was not coeval with their *ο* and *η*, which, like the Galic *E* and *I*, were simple sounds used to denote

denote the male and female of every species.

RUDE Man is incapable of forming abstract ideas: his intellectual powers are extremely limited: his reasoning faculty is applied to few objects: the rare impressions made upon his mind are therefore strong: inanimate things pass unnoticed: objects of motion and life catch his attention. Disposed to taciturnity, he seldom communicates his thoughts; but when his mind is agitated by matters of important concern, desirous to paint forcibly, he expresses himself in bold and figurative language, accompanied with bodily signs and gestures: his manner and style naturally, if not necessarily, assume the tone of animation. He delights in imagery and personification. Hence it is, that the compositions of rude and barbarous ages, transmitted to posterity, are universally found to approach to the style and numbers of poetry. The distinction of two genders sufficiently satisfies the mind

of primeval Man: the invention of a third gender is reserved for that stage of society when the understanding is much exercised, and the imagination and genius are not suffered to wanton in extravagance, but are reduced within the limits of precision, correctness, method, and rule.

THE distinction of male and female naturally claimed the earliest attention. The difference of sex was denoted by two simple sounds, which formed two distinct words in primitive language.

THE vowel *I*, with an aspiration, signifies, *to eat*. The aspiration being the termination of the sound, it had in the mouths of many acquired the guttural pronunciation *Ich*. Both *I* and *Ich* are in common use. From *Ich* came *Ichc*, which signifies *compassion*; importing, that the most common relief from distress flowed from provision of food.

It

It has been observed, that *E* is an exclamation of joy. The same sound, with an aspiration, is used as a word, signifying *a cry*. The same sound, terminating in the consonant *D*, formed the primitive word *Ed*, which signifies *food*. Hence *Edw*, *Edo*, of the Greeks and Latins.

THE more we trace mankind to their primeval state, we find them the more thoughtless and improvident. Their subsistence, like that of the greater part of other animals, depends upon the acquisitions of the day. When the means of subsistence are precarious, and not commanded with certainty, the passion of joy and the possession of food are closely allied. Hence a sound or cry expressive of joy, came naturally to give a name to the cause that produced it.

AN exclamation of *Ed* or *Eid* is used upon discovery of any animal of prey or game: it is meant to give notice to the hunting companion
to

to be in readiness, and prepare the means of conquest and possession.

Ed is used in Ireland to signify *cattle*. In Scotland it is preserved in many compound words. *Edal*, cattle, literally signifies the offspring or generation of cattle. *Edich**, clothes, literally the hide or skin of cattle. *Coed* or *Cued*, share or portion of any subject of property; literally, common food. *Faoed*, hunting; literally, gathering of food. *Edra*, the time of the morning when cattle are brought home from their pasture to give milk; literally, meal-time. These words tend to shew, that an etymological analysis of the words of a primitive language may be of use in throwing light upon the situation and circumstances of primeval Man; and may serve to mark the progress of the human mind from its simplest to its more enlarged conceptions in increasing society.

* *Ed-sheich*. *s* and *h* are quiescent.

THE first vocal expressions may with reason be said to have been the language of passion, and to have consisted of those sounds or tones which are the natural effusion of quick sensations. Those sounds or tones would be varied or modified according to the nature of the passion or sensation whence they arose.

It has been observed, that *E* is an exclamation of joy, and that the same sound is used as a word, and signifies *a cry*. Here simple imitation of a natural emission of sound, when the mind is peculiarly affected, serves to convey intelligence of some object that claims attention or notice. Nothing can be more natural than this mode of forming language. Cries are used by all animals which have the power of uttering sounds; and it is observable, that many animals are capable of various modulations of voice, which they use to express their wants, affection towards their young, or bodily pain and terror. The human voice is capable of a much greater

greater variety in these respects, than that of any other species of animal. Man's imitative talents would naturally be put in practice, for the purposes of communicating knowledge of incidents or events of sufficient importance to rouse attention. It is reasonable to suppose that primitive language would consist, first, of those cries or sounds which are natural to Man when his passions or affections are touched: secondly, of imitation of those cries or sounds, in order to convey intelligence of them to others: thirdly, of imitation of the cries of other animals; all which, accompanied by bodily signs, motions, and gestures, of a great variety of which Man is also capable, would constitute the first language, or form at least its elementary basis.

TRACES of imitative language remain in all languages. The word used for *cow* in the Galic language is *Bo**; plainly an imitation of

* The Greeks and Latins added a hissing termination, and formed it into *Bœs* and *Bos*.

the lowing of that animal. The bellowing of a bull or cow is called *Bolich*; the bleating of a sheep, *Melich*; the vowel *E* pronounced as *A* slender in English, which has a middle sound between the open *A* and the *E*, as in *fate*, *date*, *late*, &c.; and in words ending in *ation*, as *creation*, *salvation*, &c. in English; or as the Greek *H* in the manner pronounced in Scotland, clearly imitative of the voice of the sheep. The cry of a goat is called *Megadich*, expressive of the tremulous and broken voice of that animal. *Uai*, a cave, got its name from the hollow sound generally heard on entering one.

BH, in Greek, signifies *vox ovium balantium**, the voice of bleating sheep. Hence that species of animal got the name of *Βηνα*, and hence to cry aloud was expressed by *Βηζω*. The word BH, as denoting the bleating of a sheep, affords a conclusive proof, that the sound of *Eta* is not

* Hederici Lexicon.

that of the English *E*, but that of the English pronunciation of *A* slender, which is the proper English *A*; consequently that the Scottish pronunciation of that vowel is just. Hence we may also infer, that the Greek pronunciation of *Alpha* was that of the English open *A*, or the proper *A* of the Scots. The sound of the *Epsilon*, as pronounced in Scotland, is different from any sound with which an English ear is acquainted.

Boo, *boo*, *clamo*, signifying *to low* or *bellow* like an ox or cow, also *to cry*, furnishes another proof of the proper sound of the Greek *Alpha*. The word being formed from an imitation of the lowing of a cow, determines the sound of that vowel to have been that of the open English *A*. The cow and sheep being deemed among a pastoral people the most valuable animals, to whose safety and preservation their chief care was directed, imitation of the voices of both was naturally employed as expressive of a cry.

IT

It is observed by Dr. Gregory, in his "Comparative View of the State and Faculties of Man with those of the Animal World," that a child has more to learn in the first three years of his life, than he has in thirty years of any future period. The vast acquisition made by children during these years, with respect to language, discovers the wonderful flexibility of Man's organs of speech, and the vast operation of his imitative faculty*.

MOTION of tongue and lips being as natural to Man as utterance of sound, it cannot well be maintained, that the language of primeval society must have consisted of inarticulate cries alone. Articulation must have early taken place as a constituent part of language, and must have been coeval with the first essays towards the formation of words. It is difficult to exercise the voice, without beginning or terminating the sound by an application or motion of the tongue, lips, or throat. In imitating the voices of other animals,

* On this subject, see what the very learned and ingenious Author of "The Origin and Progress of Language" has written.

Man's organs of speech would naturally be exerted to make the imitation perfect. In this employment articulation was necessary. The language of nature may justly be allowed to have consisted of both simple and articulate sounds, without any artificial combinations of primitive words. Human art and contrivance would, however, very early be displayed in rendering natural language more copious, and better adapted to communicate intelligence of wants and desires. It is difficult, if not impossible, to determine by what rule men were guided in affixing certain names to inanimate things. It is equally difficult to conceive, that original names were merely arbitrary, and destitute of any imaginary connexion with the cries and articulate sounds of natural language. This much, however, is certain, that whatever principles served to determine original words and names, combinations of words were governed by properties and qualities belonging to the subject. The Galic language affords a
copious

copious and curious illustration of this proposition.

THE imagination passes easily from the recollection of one object, to that of another with which the first is usually connected. The intimate relation between objects of sense leads the mind into a habit of associating ideas; so that when an object which had once attracted attention becomes again the subject of reflection, its ordinary concomitant rises to view, and presents itself in its former shape and appearance to the mind. If the first operates as a cause, and the attendant as an effect, which from experience is observed uniformly to prevail, it will often happen, that the effect will figure as the object of greatest importance, and become the subject of chief consideration. Hence it is, that the language of primitive society so much abounds with those figures of speech which transfer the name of one object to its usual concomitant,

comitant, or the name of the proximate cause to its ordinary and natural effect.

THIS mode of forming language, and giving the appellation of one thing to another, ought not, in our opinion, to be ascribed wholly to the penury of words in early society: it is a mode of speech which is found to be agreeable to the natural operations of the human mind in all stages of society: it is relished by the cultivated genius of the refined rhetorician, as well as by the rude mind of the barbarous and unpolished orator. The deflection of words from their literal and primitive sense, and the deviation of the terms of a sentence from their plain meaning and common acceptation, are well known in the rhetorical schools by the names of tropes and figures. These are suitable to the feelings of a warm imagination, as they give an animated air to language.

It

It seems to be an admitted proposition, that the structure of primitive language is highly picturesque and figurative. These qualities are ascribed, by the elegant author * of the Critical Dissertation on the Poems of Ossian, to two causes; to the want of proper names for objects, and to the influence of imagination and passion over the form of expression. His nice discernment and refined taste have pointed out the excellencies of the Caledonian bard in the use of those figures of speech which are natural, in the age of wild freedom, to the glowing fancy of an animated poet.

In considering the present subject an observation occurs, that it seems to be a natural disposition in the mind of primeval Man, to apply the name invented for one object to another between which and that object an intimate relation is observed to subsist. It would appear, that this transference

* Dr. Blair.

of appellation figures in his mind as a more intelligible and expressive term than any new word for that object. A few instances in support of this idea may be acceptable.

*BE**, in the Galic language, signifies *life*: but it is used to denote the means of subsistence; which bearing obviously the most intimate relation to life, acquires, in a figurative sense, the appellation proper, in its primitive acceptation, to life simply. When a stranger happens to enter the house of a modern Caledonian at meal-time, the landlord addresses him with the words '*S e do † bhe*, which literally signify, *It is*

* The vowel *E* sounds like the English proper *A*.

† The word *do* is improperly used to signify *thy*: the proper word is *te*. The possessive pronouns *my*, *thy*, *his*, are expressed in Galic by *me*, *te*, *se*. In the first two the just orthography, from not attending to the pronunciation and regular analogy of the words, has been lost sight of, and retained only in the last. The original words are preserved in the Latin language as the accusatives of *ego*, *tu*, and *sui*. In these Galic pronouns the *e* has the pronunciation of the French *e* in the article *le*.

thy life, but import an invitation to come and partake of the family fare, or victuals, as the support of life.

It may occur to the learned in the Greek language, that the Galic word *Be* is the root of the Greek noun *Βίος*, which signifies *life*, and also *sustenance*. It will be remarked also, that *Βίος* is used to signify *a bow*, which was the chief instrument used by the primitive societies of temperate climes in procuring the means of supporting life. The Greek word *Βία*, which signifies *strength*, is used by the Caledonians to denote *victuals* *. Thus the word

* *Beo* signifies *alive*, and *Bas*, death. This last word is a compound of *Be*, life, and *As*, out. The Latin word *Cibus*, which signifies *victuals* or *food*, is derived from the Galic word *Cib* or *Caoib*, which signifies such a portion of meat as a man could devour at a mouthful. A *portion* or *part* is expressed in Galic by the word *Mir*, synonymous to the Greek word *Μερος*, and is expressive of a larger portion than *Cib*.—It may be observed, that *meat*, and the *action of eating*, are expressed in the Greek language by the word *Βρωσις*, and that the verb *Βρωτῶ* and *Βρωχῶ*, signify *to eat* or *devour*. These words are derived from *Bru* or *Bro*, which in Galic signifies *the belly*. *Bru* is the most common pronunciation, but *Bro* is not to be rejected; a proof of which is furnished by *Broinn*, which also signifies *belly*, and in its in-

Bia, which with the original inventors of the Celtic or Galic language denoted *viſuals*, was by the Greeks uſed to ſignify *ſtrength*; a quality depending upon the poſſeſſion of the means of ſubſiſtence.

IN the following ſheets ſome further obſervations will occur, tending to ſhew that the Greeks were originally of the Celtic ſtock, and that many of their primitives are genuine Galic; a variety of their combined words being capable of a ſatisſactory explanation, only by the analysis of Galic roots.

IT has been obſerved, that *Ed* in its primitive ſenſe ſignifies *food*. It came to be applied to denote *cattle*, when ſuch became the chief fund of ſubſiſtence. *Eallach* ſignifies *a burthen*; but it is uſed in Ireland to denote *a beaſt*. It re-

ſlected caſes varies into *Bronn*; and the word *Brolean*, which ſignifies *the paunch*. The Greek word *Βρομος*, which ſignifies a *rumbling noiſe*, is compounded of two Galic words, *Bro* and *Fuaim*, which in the compound is *Brouaim*, contracted, is pronounced *Broim*, and ſignifies *crepitus ventris*.

ceived

ceived this name from the circumstance of an animal fit for food being the most common and ordinary *burthen*, or that which attracted most attention in early society.

WE have before remarked, that *Re* signifies *division*, and that in process of time the word came to be applied to the effect of division, which was *concord* or *agreement*. In like manner the word *Reinn*, which signifies one's *portion* or *division*, is used to denote *any action*. If one should ask, if another had eaten his victuals, he would say, *An d'reinn e a bhia?* which is literally, *Has he divided his meat?* The verb *Reinn* corresponds with the English verb *to do* or *to make*. In like manner, the Greek word $\rho\epsilon\iota\omega$ signifies *to do, to make*. The act of division being originally of most frequent use, and of greatest importance, came naturally to be used as a common appellation for any action. Many more examples of the like nature might be given.

WE shall now take notice of a few combined primitives, which will serve to prove this proposition, that in joining together original roots in the progress of improvement of language, and rendering it more copious, the combinations discover an admirable justness and precision of thought, which however those who prize only the refinements of a polished age may be disposed to deny to the simplicity of primitive society, must be admitted by those who are in any degree conversant in the philosophy of a primitive and uncorrupted language. It will be found on examination, that the Galic language, in its combination of words, specifies with accuracy the known qualities, and expresses with precision the nature and the properties, which were attributed to the object denominated.

An appears to have been a word of frequent use in the Galic language, and seems to have been originally a name applied indefinitely to
any

any object. It was used to signify *a planet* * : hence *the Sun* got the name of *Grian*, which is a compound of *Gri*, hot, and *An*, a planet. *Re* was the name originally given to *the Moon*. *Re* signifying radically *division*, the propriety of the name is obvious. The changes of the Moon must have early attracted the notice of mankind: her gradual wane and increase, her regular exhibition of an enlightened orbicular surface, must have been used to mark periods, as soon as the division of time came to be made matter of any reflection or consideration. The word which is now commonly used for *the Moon* is *Gealach*; a name derived from her whiteness of colour: *Geal* signifies *white*. It has been observed, that the names by which the Sun and Moon are denominated in the sacred Scriptures, express the known qualities of these planets. *The Sun* is called *Schemes* and *Kammah*, which have an immediate relation to *heat* and *brightness*, the most sensible qualities of that splendid body.

* Bullet. Dictionnaire de la Langue Celtique.

The Moon is named *Labanah*, from the root *Laban*, which signifies *whiteness**. *Anait*, signifying a place of worship, is a compound of *An* and *Ait*, the last of which is the Galic word for *place*. The word imports, that there the Sun was worshipped. *Ben* or *Bean*, a woman, is a compound of *Be*, life, and *An*. Here it is expressive of a person giving life. It is difficult to determine why *An* should have been used to express any object. It may be observed, that it is a monosyllable of easy utterance. The word *Be* naturally derived its origin from the cries of children at their birth. A cry being a sign of life, an imitation of that cry was naturally used to denote *life*. *Bli* signifies *milk*; *An* or *Uin*, time. *Blian* is literally *milk-time*, which is the Galic word for *year*. The substantive *Bli* is used by the Welch. In Scotland *Bli* is in common use only as a verb, and in its derivative *Bliac*. The periodical return of the season in which cattle began to give milk, was

* Goguet's Dissertation on the Names of the Planets.

an event of great importance to a pastoral people: hence that momentous circumstance marked the period of the annual revolution of the seasons. *Inn* is the radical word, signifying *mind*: so *speech* is expressed by *Bri-inn*, which signifies *the sense or substance of the mind*; and *truth*, by *Fir-inn*, which signifies *true or real mind*. To pursue this subject all the length it might be carried, belongs to the province of a Lexicographer, who, in this view of our subject, might find ample materials in the Galic language for curious etymological analysis.

WE shall satisfy ourselves with taking notice of a few Galic words, which we apprehend to be worthy of remark, because they serve not only to prove the proposition we have ventured to lay down, but because they also tend to establish another proposition, That the Greek and Latin languages are of Celtic original; and that, in order to find the true etymon of many words in both, the Galic or Celtic roots must be consulted,

consulted, and their combinations analysed. The honour of being the parent of such an illustrious progeny, many of the admirers of the highly-refined languages of Greece and Rome will not, perhaps, be disposed to bestow on a language, barbarous, it may be said, because it lives, probably in greatest purity, among the inaccessible wilds of Caledonia, and the unmixed descendants of the antient Irish. It becomes not the learned to cherish prejudices. A well-informed mind will be inclined to examine every proposition with candour and liberality.

THE θεος of the Greeks, and the *Deus* of the Latins, both signifying *God*, are compounded of two Galic words; *Ti*, a being, and *Tos* or *Tus*, equally common to denote *first* or *beginning*. In the compound, these two words are pronounced *Tios* or *Tius*, the first letter of the second word being always thrown out. The letter *T* in the word *Ti* has a middle sound, or soft pronunciation, between the *Theta* of the
Greeks

Greeks and the *T* of the English, and is formed by application of the tongue to the teeth and roof of the mouth. *Θεός* signifies literally, *the first being*. In like manner, the *Venus* of the Latins is a compound of *Ben* and *Tus*, which literally signify *the first woman*. The letter *B*, in compounds and inflections, is always softened into *V*; so that, in Galic, *the first woman* is properly denominated *Bhenus*, pronounced as if written *Venus*. *Εἶδα* and *Εἶδαρ* signify *food*. These words are compounded of the Galic words *Ed* or *Eid*, and *Ar*: the former signify *food* simply, and the latter, *ploughed land*. The word *Εἶδαρ*, in strict propriety of speech, signifies that species of food which is produced from the culture of the ground, or from ploughed land. It will readily suggest itself to the learned, that the combined words of *Εἶδαρ* form the roots of the Greek and Latin words *Εἶδω*, *edo*, *Ἀρω*, *aro*. *Εἶρα*, which signifies *a seat*, has an evident reference to food. The word is compounded of two Galic words, *Ed* and *Tra*, which literally

I

signify

signify *meal-time*: the *T* is lost in the compound. There is an intimate relation between the act of making a meal, and the place or seat where the early tribe or society assembled and sat down to eat. Ammianus Marcellinus says of the Alans, "Cumque ad graminea venerint in orbiculatam figuram locatis Sarracis ferino ritu vescuntur." When the wandering society made a meal, they sat in the form of a circle; and though the author compares their manner of eating to that of wild beasts, yet regularity and order must have been observed in the division and distribution of their food. We shall have occasion to consider in another place the manner in which that matter was regulated. *Edos*, which also signifies a *seat*, derived its name from the relation between eating of food and the place where it is eaten. The *Ædis*, or *house*, of the Romans, got its name from the important circumstance of its being the place of resort for the family or tribe at meal-time. *Edvæ*, which signifies *dona sponsalia*, or presents which a bridegroom made

to

to his bride, is a compound of two Galic words, *Ed*, and *No* or *Nua*, literally signifying *new food*. This word has a reference to the condition of primeval society. When the objects of greatest value consisted of the means of subsistence, an article of fresh or new food must have been in a high degree acceptable. When marriage came to be introduced, the presents made by a new-married man to his bride still retained the denomination of *Eḏνα*.

FROM *Ar* there are many Greek derivatives. *Ἀρερα* signifies *ploughed land*, also *crop of corn*. *Ἀρτος* signifies *bread*. In Galic, *a crop of corn*, and *bread*, are expressed by *Arbhar*, commonly pronounced *Arar* and *Aran*; all being equally derivatives of the root *Ar*. So the Greek and Latin words, *Ἀροτος*, *arabilis*, arable; *Ἀροτρον*, *aratrum*, a plough; *Ἀροτηρ*, *arator*, a ploughman; and many others, are evidently derived from the same source.

IT has been observed, that *Re*, in its primitive acceptation, signifies *division*; in its second acceptation, *concord*, the consequence of division or distribution of food. It also signifies *clear*, *without obstruction*, which is the effect of concord. Thus the English word *Road* signifies, in Galic, *clear turf*; *Re-od*—contracted, *Rôd*—a compound of *Re*, clear, and *Fod*, turf. The letter *F* is quiescent in the compound. It may be observed, that *ῥεα* in Greek signifies *easily*, and *ὁδός* signifies *a way*. *ἄνθρωπος*, *vir*, a man, is a compound of the Galic words *An* and *Fer*, which in the inflected cases are pronounced *Aner*, the man. *Fer* in the plural is *Fir*. The Latins, for the sake of uniformity, changed the *e* in the singular number to *i*, and in the nominative plural added their regular termination of masculine nouns of the grammarian's second declension.

WE recollect to have read somewhere a conjecture, that the *hand* was probably the first
comb

comb made use of in primitive society. The Greek word for *hand*, and the Galic word for *comb*, confirm the justness of that idea. The Greek word for *hand* is $\chi\epsilon\iota\rho$; the Galic word for *comb* is *Cir*, and in the inflected cases *Chir*; the Celts still applying the original word for *hand*, being the natural *comb*, to that artificial instrument which was destined to be so highly necessary to the decoration of both sexes in refined society.

THE varied terminations of the Greek and Latin nouns and verbs have much obscured the roots and combinations of the original language, which was the subject of that artificial superstructure displayed in so admirable a degree by those most highly cultivated and refined languages. The groundwork, however, is not obliterated: the Celtic stamina are visible, and remain a monument of the Celtic parentage of the renowned Grecian and Roman people.

and the state of the country. The
first part of the history is the
history of the country. The
second part is the history of the
people. The third part is the
history of the state. The fourth
part is the history of the
nation. The fifth part is the
history of the world. The sixth
part is the history of the
universe. The seventh part is
the history of the gods. The
eighth part is the history of
the angels. The ninth part is
the history of the saints. The
tenth part is the history of the
souls. The eleventh part is the
history of the bodies. The
twelfth part is the history of
the spirits. The thirteenth part
is the history of the elements.
The fourteenth part is the
history of the planets. The
fifteenth part is the history of
the stars. The sixteenth part
is the history of the moon. The
seventeenth part is the history
of the sun. The eighteenth part
is the history of the earth. The
nineteenth part is the history
of the sky. The twentieth part
is the history of the world.

This is the history of the
world. The first part is the
history of the world. The second
part is the history of the world.
The third part is the history of
the world. The fourth part is
the history of the world. The
fifth part is the history of the
world. The sixth part is the
history of the world. The seventh
part is the history of the world.
The eighth part is the history of
the world. The ninth part is the
history of the world. The tenth
part is the history of the world.
The eleventh part is the history
of the world. The twelfth part
is the history of the world. The
thirteenth part is the history of
the world. The fourteenth part
is the history of the world. The
fifteenth part is the history of
the world. The sixteenth part
is the history of the world. The
seventeenth part is the history
of the world. The eighteenth part
is the history of the world. The
nineteenth part is the history of
the world. The twentieth part
is the history of the world.

O R I G I N
O F
P R O P E R T Y.

MAN is led to gratify his appetite for food from an instinctive feeling. No train of reasoning was necessary to teach him, that the fruits and herbage which pleased his eye, and were grateful to his taste, were intended by the Creator to supply him with nourishment; or that the pure stream which issued from the limpid fountain was destined to afford him salubrious refreshment. His appetite he might indulge without control, while the means of subsistence afforded by the bounties of Nature, without the intervention of care or industry, art or labour, were more than sufficient to satisfy the wants of the human race existing in a state of primeval simplicity.

A SENSE

A SENSE of right to enjoy the fruits of the earth necessarily accompanied the gratification of appetite for food. There subsists in the human mind a primary universal and permanent sense or opinion of right, without any deduction of reason or reflection, in regard to the free use of every herb bearing seed which is upon the face of all the earth, and the fruit of every tree that is pleasant to the sight, and good for food.

THIS sense or opinion of right could never have discovered itself by visible effects, while there existed no occasion for competition about the means of subsistence, or gratification of appetite. If a sense of right accompanies the enjoyment of Nature's productions, there must necessarily arise in the mind a sense of violation of that right, when any attempt is made to limit or restrain the wonted gratification of natural appetites and desires. It is the nature of Man, to feel anger or resentment when he is opposed or obstructed

obstructed in the pursuit of the means of self-preservation, or in the gratification of his natural wants. When his confident hope of natural enjoyment is frustrated by superior force, cunning, or dexterity; a sense of injury arises in his mind against the author of his disappointment, and he is naturally led to remove, overcome, or destroy the obstacle that opposed itself to the gratification of his desires. If there had not existed a primary sense of right to enjoy the fruits of the earth, and all the productions of nature, there could be no injury felt by the weak when obstructed by the strong in the pursuit of gratifying natural propensities and desires.

THIS sense of natural right would often, in the earliest stages of society, be violated by the strong to the prejudice of the weak; but until the arrival of that period when property came to be understood as belonging exclusively to a tribe or community, any violation of natural right could be productive of no dangerous effects,

K

and

and could require no combined efforts of society to check its progress. The natural inclination of men living in primitive society leads them to share their stock of provisions freely with one another: any departure from this general disposition could operate only as a rare and unimportant exception from a general rule.

THE regulation of property is the object of Justice. Prior to the establishment of a system of exclusive property, there was no occasion for erecting a tribunal for the administration of justice: yet that an idea of property had existence in primeval society, we are led to conclude, from the intimate connection subsisting between a person and a subject of frequent and necessary use.

JUSTICE, so far as it is made a system, and enforced by the civil magistrate, may with propriety be said to be founded in public utility; but its origin may be traced to a remoter and more simple source.

THE

THE idea expressed by the Roman poet* appears to be philosophically correct:

Atque ipsa utilitas justæ prope mater & æqui:

meaning, that before the general utility of regulating property came to be understood, a sense of justice and equity was not unknown to the human mind.

THE Galic language furnishes no proper word to express *possession* †, as it is understood distinct

* Hor. Sat. lib. i.

† The word *Seilbh* is properly *cattle*. In the strictest sense of the word, it is a generic name for *animals dropping a liquid substance*. *Seil* signifies, *to fall in drops*; and *Seilag*, a small or inconsiderable portion of any liquid substance. It is the custom of the Highlanders of Scotland, in the summer months, to remove, with their wives, children, the necessary household furniture, and all their cattle, from their winter habitations (which are situated in the vallies, where their corn-fields are), to their pasture-grounds upon the higher and more distant mountains. There they remain, with their cattle, until the grass of the lower grounds is fully grown. Then they return with their milch cattle only, leaving what they call their *seasg* or *dry cattle* in the higher pastures. The word *Sheil* is still preserved, among the people of the low country of Scotland, as a name for that spot of the pasture-grounds upon which the Highlanders

from property; which affords a proof that, according to the apprehension of primeval society, possession alone constituted the criterion of right to use any subject, and that Man formed no conception of a right of property in one person, and a right of possession in another.

It can hardly be maintained, however, that no idea of singular appropriation was entertained in primitive society. Although the means of subsistence procured by the united efforts, or preserved by the joint care, of the community were deemed to be common to all; yet some subjects were so intimately connected with the user of them, that they must have been considered in some measure as his exclusive property. It cannot well be conceived that the bow, which

build their summer huts. As the act of taking possession was accomplished by putting cattle on the pasture-grounds, so the word *Seilbh* came to be used for *possession* itself, by a very common and natural transition from one thing to another between which and that thing there is a necessary or usual connection.

primitive

primitive Man carried either for his defence or personal safety, or for procuring subsistence; or the skin of the animal he had killed, and which served to cover his body from the inclemency of the weather, could be considered as common to all the members of the community. There were some things which, from their natural use, were so necessarily connected with an individual as to be deemed an appendage of his person, and held to be his property while the attachment subsisted. This idea of connection with, or appendage of, person, is curiously illustrated in the Galic language.

THE possessive pronouns *mine, thine, his, ours, yours, &c.* are all significant of exclusive property. The corresponding words to these, in the Galic language, are regularly expressed by *leim, leut, le-e*, leinn, lei.* To understand the

* The Galic scholar will perceive that, according to strict regularity, *his* should be expressed by *le-e*. *E* signifying *he* or *him*, *ese* signifies *himself*. *se* in Galic has the same force, and corresponds exactly, with *self* or *selves* in English. It is easy to discover,

original import of these words, we must attend to their etymology. The first pronoun is compounded of *le*, with, and *mi*, I or me, in English. In pronunciation *i* is transposed, and placed before the letter *m*. The *i* has by common use acquired in this word the pronunciation of *u*. *Tu* signifies *thou*. The vowel *u* is transposed, and put before the *t*, for the sake of easier pronunciation. So, instead of saying *lemi*, *letu*, they say *leim*, *leut*. These words, corresponding to the *meum* and *tuum* of the Latins, literally signify *with me*, *with thee*; importing, that the original idea of property depended upon the cir-

cover, that in the word *le-e*, where the same vowel occurs twice without a varied termination, the *se* was adopted for the sake of a more distinct and forcible pronunciation. But instead of saying *le-ese*, the word is contracted, and pronounced as if written *lesh*, commonly spelt *leis*. It may be observed, that in the word corresponding to *hers*, the *se* is not assumed, because, the termination being in a vowel of a different sound, the ear was satisfied with the combination of the simple primitives. It may also be noticed, that although the regular pronunciation of the words corresponding to the English *ye* and *yours* is *sei* and *lei*, the pronunciation of these words is often, though unnecessarily, closed with the sound of *v*, written in Galic *seibh*, *leibh*.

cumstance

cumstance of a particular subject going along with, or attending, a particular person. That visible connection made that subject *mine*, *thine*, or *his*.

THE pronouns *ours*, *yours*, imply a joint concern or property. *Ours* is expressed by the word *leinn*, which signifies literally *with us*, it being a compound of *le*, with, and *inn*, us. So *yours* is expressed by *lei*, which signifies *with you*. It is curious to observe, that *children*, *race*, or *generation*, are called *leinn*. The name is obviously derived from the circumstance of the children being the attendants or followers of the tribe or society. *Children* are commonly expressed by *cloinn*, compound of *co* and *leinn* or *linn*, common offspring. The vowel *o* is transposed, and put after the *l*, *euphoniæ gratia*. *A child* is called *leani*; compounded of *lean*, which signifies *to follow*, and *ti*, being or person. In the compound the *t* is quiescent. *Lean* is literally *with one*, *along with one*. Hence property owed its origin to the habitual connection observed to
subsist.

subsist between a principal object and its attendant or accessory; and this connection had so strong an effect upon the imagination, as to impress upon the mind a sense of *right* of possession. Hence, too, any attempt made to deprive the possessor of a subject, in which a visible connection with his person gave him a peculiar interest, would be the occasion of displeasure and resentment. Hence a sense of wrong or injustice.

ORIGIN

O R I G I N O F G O V E R N M E N T.

THE first and most important object of primeval Man's attention was self-preservation. He entertained no notion of an interest in himself, separate and distinct from that of the society of which he formed a constituent member. With his fellows he was united in all measures for mutual safety. The means of subsistence were common to all. Exclusive property was altogether unknown. Even wives and children were the wives and children of the community. The exclusive use of any subject was natural only so far as it was directly connected with possession, and unavoidably necessary in primitive society.

L

THE

THE clearest proofs remain of the community of goods among the antient Celts, who formed the rudiments of the Galic language. They had no word expressive of *exclusive property*; and the terms* used at this day to denote property are found, when analysed, to be a proof of the proposition, That exclusive property made no part of the system of primeval society.

As the productions of the earth were common to all, so the stock of provisions acquired by a tribe or society dwelling together, would be considered as a common subject destined to the use of all the members of that tribe or society. The act of distribution of food would frequently be necessary; it would therefore be expedient to have some person appointed for performing that office. The person most expert in making provision for the community, and most respectable for age and useful qualities, would naturally

* *Coed* or *Coeid*, common food; *Coir*, common land.

assume that employment. It is curious to observe, that the word by which *King* is expressed in the Galic language, literally imports a *Divider* or *Distributor*. *Rei* is a compound of *Re*, division, and *Ti*, a being or person. The consonant *t* is in the compound quiescent.

WHERE it required any degree of art, industry, or labour, to procure the means of subsistence, the acquisitions of the individual members would form a common stock, and would at stated times be distributed among the community, according to the judgment or will of the person entrusted with the office of *distributor*. This person would, in process of time, acquire a considerable degree of authority among the members of the community; and upon occasions of differences, disputes, or contentions with regard to food or raiment, or the instruments employed for defence or procuring the means of subsistence, would naturally be applied to as umpire or arbiter between the parties: so that the office

of distributor of food would gradually rise into higher power and dignity; and the acquiescence of the community would, in the progress of society, stamp upon his decisions the efficacy of magisterial authority.

It is not to be supposed, that the societies or communities which were accustomed to assemble together and eat in common at stated meal-times, consisted of a great number of individuals. All the members of the great tribe or community of the same stock, who had united themselves in one common interest, from considerations of convenience, affection, or policy, would hold themselves equally intitled to the freedom of the territory traversed by the tribe in procuring the means of subsistence, while as yet no exclusive property was understood. Yet in the act of providing food, the tribe would be separated into small troops or bands, keeping together, like one family, eating in common at stated times in the day, and
lodging

lodging together in one common place of rest at night.

THE original families of mankind consisted not of two parents, one male and one female, and their immediate descendants. They were composed of several males and females, herding together, eating in common, and sleeping promiscuously with their common offspring. The Galic language furnishes a curious proof of this proposition. The two words denoting *family*, in that language, are *Coeidiche* and *Teadhlach**. These two words, etymologised, signify literally, *eating in common*, and *resort* or *rendezvous at night*. The pronunciation of the last of these words is in the compound a little varied from that of the original words. But the word is evidently composed of *Tadhal*, which signifies *resort*, and *Oich*, night. Thus *family* derived its name from the two chief circumstances which

* *Teadhlach* in the oblique cases ends in *oich*. *Coeidiche* denotes also *any company*.

figured

figured most forcibly in the imagination as linking together a certain number of people. The characteristic marks of primitive family still remaining, those two words naturally continued to be applied to one man and one woman and their children, after marriage was introduced, and a permanent union of the sexes established. The origin of that institution shall be considered in another place.

IN each family, or little horde, there was a *Rei*, a divider or distributor of the common stock of provisions; but his authority was of a very limited nature, and by no means extended over any other separate or distinct horde or family.

ALTHOUGH the small hordes slept and fed in common upon ordinary occasions, yet upon days of public festivity and mirth, the whole tribe would be assembled to eat, drink, and dance together. Upon such occasions a *Rei*, or distributor,

butor, would be necessary. The office of distributor would be assumed by the *Sachem*, or great chief of the whole tribe, who thus would hold a more dignified place, and, for the time, a higher rank than any other member of the society.

THE office of distributor, in primitive society, at meals and feasts, is not ideal or imaginary: its existence in the customs of rude nations is evinced from their history.

FATHER Jerom Merolla, in his account of a voyage to Congo, describes the customs of the inhabitants of that island, in their eating and drinking at feasts, which they celebrated in great numbers.—“ A great company being got together, they sit round in a ring upon the green
“ grass; which having done, a large thick round
“ wooden platter is placed in the midst of them.
“ This platter is called by them *Malorga*. The
“ eldest of them, whom in their language they
“ call

“ call *Maculuntu* or *Cocolocangi*, is to divide and
 “ dispenſe to every one his portion ; which he
 “ performs with that exactneſs, that, if there
 “ happen to be a bit better than ordinary, that
 “ is likewise divided proportionally among the
 “ company. By theſe means there are no com-
 “ plaints or murmurs to be heard amongſt them,
 “ but every one is contented with what is
 “ allotted him. When they drink, they make
 “ uſe of neither cups nor glaſſes, to the end
 “ that every man may have what is judged
 “ ſufficient for him, and no more. The judge
 “ of this is the *Maculuntu*, who holds the
 “ *moringo*, or flaſk, to the perſon's mouth that
 “ drinks ; and when he thinks he has drank
 “ ſufficient, he pulls it away. This is praſtiſed
 “ all along, even to the end of the feaſt. That
 “ which ſeems ſtrangeſt to me is, that if any
 “ perſon whatſoever, man or woman, great or
 “ ſmall, though not known to them, happens to
 “ paſs by where the gueſts are eating, he or ſhe
 “ thruſts into the ring, and has an equal ſhare
 “ with

“ with the rest, without the trouble of making
 “ any compliment, or speaking a word. If this
 “ stranger happens to come after the portions
 “ are allotted, then is the carver to take some-
 “ thing from every man’s mess, to make up a
 “ share for him. If it so chance that many un-
 “ invited guests come, they all have the afore-
 “ said liberty, and may eat and drink as freely
 “ as if they had been invited. When the tra-
 “ vellers perceive the platter empty, they rise
 “ up and go their ways, without taking any
 “ leave, or returning thanks to the company.”

THE learned Father says of himself, “ It has
 “ happened to me, that, being about to entertain
 “ some persons who had been serviceable to me,
 “ at dinner-time, I observed the number of my
 “ guests greatly increased ; whereupon, asking
 “ who those new-comers were, they answered,
 “ they did not know ; which caused me to re-
 “ ply, ‘ Then do ye allow of those to eat with
 “ ye, who have had no share in your labour ?’

M

“ To

“ To which all the answer I could get from
 “ them was, that it was the custom so to do.”

THE good Father adds: “ This charity of
 “ theirs seemed to me so commendable, that I
 “ ordered their commons to be doubled, being
 “ not a little pleased to find so great love and
 “ amity even amongst *Pagans*. If the like good
 “ custom were practised among us, we should
 “ not have so many poor indigent wretches die
 “ in the streets, and other places, merely for
 “ want, as there almost daily do in all coun-
 “ tries.”

THE author's surprize was natural. His prior
 experience was limited to the observation of the
 manners and customs of a civilized people living
 under the influence of a system of exclusive
 property. His reflections, however, discover
 more benevolence of heart, than knowledge of
 the natural commencement and progression of
 society.

COMMO-

COMMODORE Johnstone, when Governor of Pensacola, visited an Indian chief in friendship with the British government. The chief treated the Governor and his attendants with all the marks of kindness and hospitality of which the simplicity of his manners was capable. In particular, he presented to his guests a beverage called the *black drink*, much esteemed among the Indians. The Governor remarked it as a curious circumstance, that not only the distribution of the drink was regulated by the chief, but the length of the guest's draught was measured by the duration of his whistle. The silence of the chief was a signal to the drinker for removing the cup from his mouth.

It would appear from Homer, that the Greeks, in the heroic times, had none of those implements which the refined luxury of modern ages finds so necessary to the arrangement and distribution of the necessaries as well as the delicacies of the table. When the heroic Greeks were preparing

to make a meal, a chief seized the animal to be sacrificed, and killed him. Immediately his magnanimous associates cut him in pieces, and prepared him for the broiling-spits. The division and distribution of the animal were made the chief. It was a mark of distinction to be served with a large piece of meat. In the Iliad we see, that Ajax was honoured by Agamemnon with the back of a bull*.

* Οἱ δ' ὅτε δὴ κλισίῃσιν ἐν Ἀτρεΐδαο γέγοντο,
 Τοῖσι δὲ βῆν ἱέρευσεν ἀναξ ἀνδρῶν Ἀγαμέμνων
 Ἀρσένα, πενταέτηρον, ὑπερμενέει Κρονίωνι·
 Τὸν δέρον, ἀμφὶ θ' ἔπον, καὶ μιν διέχευαν ἅπαντα,
 Μίσυλλον τ' ἄρ' ἐπισαμένως, πῆϊράν τ' ὀβελοῖσιν,
 Ωπτησάν τε περιφραδέως, ἐρύσαντό τε πάντα.
 Αὐτὰρ ἐπεὶ παύσαντο πόνος, τετύκοντό τε δαῖτα,
 Δαίνυντ', ἔδ' ἐ τι θυμὸς ἐδέυετο δαιτὸς εἴσης·
 Νώτοισιν δ' Αἴαντα δηνεκέεσσι γέρας ἔειρεν
 Ἥρωσ' Ἀτρεΐδης, εὐρυκρείων Ἀγαμέμνων.

Hom. Il. lib. vii. v. 314.

A steer for sacrifice the King design'd,
 Of full five years, and of the nobler kind.
 The victim falls: they strip the smoking hide;
 The beast they quarter, and the limbs divide;
 Then spread the tables, the repast prepare;
 Each takes his seat, and each receives his share.

The

WE find Achilles killing a sheep, and his companions occupied in cutting it up, and preparing it for the coals. Automedon, his charioteer, is entrusted with handing about the bread-basket; but Achilles himself distributes the flesh of the animal*.

The King himself (an honorary sign)
Before great Ajax plac'd the mighty chine.

POPE.

The learned reader may observe, that Homer uses the word *Μίσυλλον*; intimating that the animal was cut into small pieces. It may also be remarked, that the words importing that Ajax was served with the back of the bull which was slain, are put in the plural number; and, if we are not mistaken, are meant to express, that Ajax was presented with all the back pieces of the animal.

* Η, καὶ ἀναΐζας οἷν ἄργυρον ὠκύς Ἀχιλλεύς
Σφάζ· ἔταροι δ' ἔδερὸν τε καὶ ἄμφεπον εὖ κατὰ κόσμον,
Μίσυλλον τ' ἄρ' ἐπισαμένως, πεῖραν τ' ὀβελοῖσιν,
Ὀπτησάν τε περιφραδέως, ἐρύσαντό τε πάντα.
Αὐτομέδων δ' ἄρα σῖτον ἔλων ἐπένειμε τραπέζῃ
Καλοῖς ἐν κανέοισιν· ἀτὰρ κρέα νεῖμεν Ἀχιλλεύς.

Hom. Il. lib. xxiv. v. 622.

He said; and, rising, chose the victim ewe
With silver fleece, which his attendants flew.
The limbs they sever from the reeking hide,
With skill prepare them, and in parts divide.

Each

MR. Carver, in his account of the American Indians, observes, that they eat in large parties, so that their meals may be properly denominated feasts. They dance either before or after every meal. They are in the highest degree hospitable, kind, and free. They share their provisions with one another liberally, and strangers are permitted to partake freely, if they happen to come in the way at meal-time. Though they do not keep one common stock, yet the community of goods is so prevalent, that

Each on the coals the sep'rate morsels lays,
And, hasty, snatches from the rising blaze.
With bread the glitt'ring canisters they load,
Which round the board Automedon bestow'd.
The Chief himself to each his portion plac'd,
And each indulging shar'd his sweet repast.

POPE.

From Pope's words the English reader would understand, that it was the attendants of Achilles who killed the sheep intended to be dressed for his company; but the original informs us, it was Achilles himself that slew the white-fleeced animal. It may be observed, that in this poetical translation, though exquisitely beautiful, and admirably just upon the whole, several important circumstances pertaining to antient manners seem not to have sufficiently engaged the elegant translator's attention.

they

they are in reality common to the whole tribe, and a right of exclusive property is not known. All public business concludes with a feast.

PUBLIC feasts, which were always the occasion of mirth and dancing, constituted a great part of the amusements of primitive society, and the office of *distributor* was frequently exercised by the chief. This office, though originally attended with little pre-eminence, came, in progress of society, to lay the foundation of the most important distinctions known among men.

THE natives of Congo live in a state of polygamy. The women perform the labour of the field, and sow their beans, which are the chief article of their subsistence. They have two harvests in the year. When harvest is over, they put all the kidney-beans into one heap, the Indian wheat into another, and so on with other grains; and having given the *Macolonti*, or King, enough for his maintenance, and having
laid

laid aside what is deemed necessary for sowing, the remainder is divided at so much to every cottage, according to the number of its inhabitants*.

WE are told by Cæsar and Tacitus, that the antient Germans paid little attention to agriculture; that no man among them held landed property by exclusive right of inheritance. The princes annually allotted to separate bodies of the people herding together, such a portion of territory as was sufficient for their maintenance.

CÆSAR's words are these: "Agriculturæ non
 " student; majorque pars victus eorum in lacte
 " & caseo & carne consistit. Neque quisquam
 " agri modum certum, aut fines proprios habet:
 " sed magistratus ac principes in annos singulos,
 " gentibus cognationibusque hominum *qui una*
 " *coierunt*, quantum & quo loco visum est,

* F. Denis de Carli's Account of Congo, in Churchill's Voyages.

" agri

“ agri attribuunt; atque anno post alio transire
“ cogunt *.”

TACITUS expresses himself in the following words: “ Agri pro numero cultorum ab univer-
“ sis per vices occupantur, quos mox inter se se-
“ cundum dignationem partiuntur. Facilitatem
“ partiendi, camporum spatia præstant. Arva
“ per annos mutant, & superest ager †.”

THE act of division of territory being exercised by the chiefs once in the course of every year, led to the most important consequences. Their determinations being as yet influenced by no corrupt motives of gain, but directed by views of general good, received habitual acquiescence. The uniform exercise of the power of distribution obtained the efficacy of legal right, and served to impress

* Cæsar de Bello Gallico, lib. vi. cap. 20.

† Tacit. de Moribus Germanorum, cap. 26.

upon the minds of the people a sense of obligation of submission to the will of the prince.

THE appropriation of any portion of the general stock of provisions to the use of an aggregate body, family, or tribe of individuals, easily led to the appropriation of a certain portion to the use of the chief. This destination gave stability to his pre-eminence. Being in use to regulate the division or distribution of the subjects of property belonging to the whole tribe, and among a pastoral people to mark out the boundaries of their pasture-grounds; his authority naturally extended to the division or distribution of landed possessions, when agriculture was become an object of attention, and the people depended upon the cultivation of the soil, as affording their principal fund of subsistence. The chief easily retained for himself a portion of territory corresponding to the acknowledged dignity of his station.

IN

IN that rude period of society when men, destitute of the knowledge of taming cattle, and ignorant of the arts of agriculture, derive their sustenance merely from the natural productions of the earth, and the arts of war practised against the beasts of the field; the office of magistrate, vested with the power of efficacious decision in any matter whatever, is unknown. The independence of the individual is so perfect, that he acknowledges no right in any man to direct his conduct. The chief's distinction originates in the display of excellent personal qualities: these alone procure to him lasting reverence and esteem.

IN pastoral life, the power of the chief is greatly enlarged. The respect and reverence paid to him, are not wholly governed by a sense of his superiority with respect to personal talents and abilities: a new source of influence arises from the particular appropriation to himself of an ex-

traordinary portion of the general stock of the tribe; which being under his command, and subject to his direction, paves the way for the establishment of hereditary succession, that most important revolution in the condition of Man. The æra of its commencement may be referred to pastoral life. Among shepherds, it gains a considerable degree of vigour: a knowledge of agriculture superadded to that of taming cattle gives it stability and permanency. It is in the pastoral state of society that the human mind begins to be influenced by a blind admiration of the possessor of superior fortune, and no longer views the chief with the correct eye of that rude untutored man to whom philosophers apply the epithet of savage.

THE admiration in which the antient Germans held their princes, is painted by Tacitus with his usual force and beauty: "Illum de-
" fendere, tueri, sua quoque fortia facta gloriæ
" ejus

“ ejus assignare, præcipuum sacramentum est.
 “ Principes pro victoria pugnant; comites, pro
 “ principe *.”

THEY esteemed it a sacred and inviolable duty, to defend their chief. By ascribing to him the honour of their bravest actions, they gratified their ambition of heightening the lustre of his renown: their most valorous achievements received an ample reward by the increase of his glory. Still, however, the individual felt a flattering consciousness of exaltation from the celebrity of the chief, which reflected fame and reputation on the whole body of the tribe.

THE actual possession of a large portion of territory by the chief in his individual capacity, and his acknowledged right of division of the pasture-grounds, derived from antient usage,

* Tac. de Mor. Germ.

and

and confirmed by constant practice, induced men to entertain the momentous opinion, that the prince of every people is intitled, by indisputable right, to regulate the disposal of the landed property in possession of his subjects.

HENCE it is, that, by the principles of the feudal system, the whole territory of a kingdom is held to belong to the king, from whom all property is derived as the fountain of right.

THE English laws and customs were introduced into Ireland in the reign of Henry II. The abolition of the antient Irish customs, the Brehon law, and the law of Tanistry, were objects to which the English government paid much attention. By a statute made in a parliament held at Kilkenny in the reign of Edward III. the English are commanded to govern themselves in all controversies by the common laws of England; and whoever submitted

mitted himself to the Brehon law was declared a traitor *.

NOTWITHSTANDING the severity of the English laws upon that subject, the antient laws and customs of the Irish were not totally abolished till the reign of James I. of England, when the law of *Tanistry* was condemned *as a lewd and barbarous custom*, by a final judgment in the King's Bench†.

By the customary law of the antient Irish, the *Tanaiſter* (who was the next brother, or the blood relation second in dignity, to the chief) had allotted to him a much larger portion of land than any other kinsman. Every descendant of the chieftain's family was understood to be intitled to the possession of some part of the territory of the tribe. The right of transmiſſion

* Sir James Ware's Antiquities of Ireland, p. 69.

† Davis's Reports, Case of Tinistry, p. 28, &c.

of the chief's domain to any of his immediate descendants, was not acknowledged to be absolutely vested in him. He was sometimes deposed by the tribe for imbecillity and mal-administration; and the *Tanaister* was often elected and raised to his station, preferably to any of his children. Yet the distribution of the lands and regulation of possession among the kinsmen were in the hands of the reputed chief, by whom they were removable at pleasure*.

* By an inquisition taken before the Vice-President of the province of Munster, in the year 1594, by virtue of a commission from the Lord Deputy and Council, it was found among other things, " that *Conoghor O-Callaghan*, alias the *O-Callaghan*, was
 " and is seized of several large territories in the inquisition re-
 " cited in his demesne, as *Lord* and *Chieftane* of *Poble-Callaghan*,
 " by the *Irish* custom time out of mind used; that as *O-Cal-*
 " *laghan* aforesaid is *Lord* of the said country, so there is a *Tanist*
 " by the custom of the said country, who is *Teig O-Callaghan*,
 " and that the said *Teig* is seized as *Tanist* by the said custom of
 " several plow-lands in the inquisition mentioned; which also
 " finds, that the custom is further, that every kinsman of the
 " *O-Callaghan* had a parcel of land to live upon, and yet
 " that no estate passed thereby, but that the *Lord* (who was
 " then *Conoghor O-Callaghan*) and the *O-Callaghan* for the time
 " being, by custom time out of mind, may remove the said
 " kinsmen to other lands; and the inquisition further finds,
 " that

COMMON possession of the cultivated soil, as well as of the pasture-grounds, by a collective number of individuals, is to this day known in the Highlands of Scotland. The arable grounds are divided into as many parts as there are tenants intitled to an equal share of possession. The stock of cattle belonging to each tenant is considered as equal: the advantages accruing to the several partitions from manure are deemed also to be equivalent: yet some portion of these divisions shifts annually from one possessor to another, in such manner, that, in a certain period of years, every tenant of the village has occupied and reaped crops from all the lands belonging to the village.

“ that O-Callaghan Mac-Dermod, Irrelagh O-Callaghan, Teig
 “ Mac-Cahir O-Callaghan, Donogho Mac-Thomas O-Callaghan,
 “ Conghor Genkagh O-Callaghan, Dermod Bane O-Callaghan, and
 “ Shane Mac-Teig O-Callaghan, were seized of several plow-
 “ lands according to the said custom, subject nevertheless to
 “ certain feignories and duties payable to the O-Callaghan,
 “ and that they were removable by him to other lands at his
 “ pleasure.” *Sir James Ware’s Antiquities of Ireland*, p. 71.

O

THE

THE establishment of exclusive property in individuals, and the observance of marriage as a civil institution intitling to certain benefits conferred by the favour of law, discovered the utility of a division of that common subject which was in former times rendered productive by the joint labour of the whole community. After this revolution happened, it is evident that a certain qualification was requisite in order to intitle one of the people to become a possessor of land in the character of a villager: he must be the proprietor of moveable stock equal to that of each of the other occupants. By this means he is distinguished from the general mass of the people, and ranked in a class with those who had arrived at consideration and respect. Hence we may learn the reason why the Galic phrase *Duine coir* (which literally signifies *a man of equal land*, and was properly used to denote *a villager*) came to express *a civil and humane man*, which is its present acceptation; importing, that the
class

class we have been describing consisted of men of greater circumspection of behaviour, and of more chaste and regular manners than were prevalent among the great body of the vulgar.

IN the natural order of appropriation of territory, lands were not at first held in possession by individuals, who were considered to be intitled to labour and cultivate distinct portions of the soil: they were allotted to small societies or communities; each of these to hold its division as a subject of common use and possession*. While the territory belonging to a rude nation is fully sufficient to maintain the people, by means of a transient and desultory application of labour to the cultivation of the soil; they, like their cattle, will lead a wandering life,

* The appropriation of land to tribes, before the exclusive right of possession in individuals was acknowledged, escaped not the observation of the ingenious and well-informed Author of the "Dissertation concerning the Antiquity of the English Constitution," and of the "View of Society in Europe, in its Progress from Rudeness to Refinement."

changing their habitations as their herds change their pastures. This state of society is highly pleasing to the genius and disposition of Man. It is calculated to gratify by turns the social, the active, and the indolent qualities of his nature.

THE felicities of this age have much engaged the fancies of poets. Upon a cooler and more philosophical view of the subject, it may be admitted, that as it favours the benignant qualities of the heart, and excludes the avaricious desires of more advanced society, it contributes in a high degree to the aggregate fund of Man's general happiness*.

* Hear how Justin expresses himself upon this subject in his account of the Scythians: "Aurum & argen um perinde as-
 "pernantur ac reliqui mortales appetunt. Hæc continentia
 "illis morum quoque justitiam edidit nihil alienum concu-
 "piscuntibus. Quippe ibidem divitiarum cupido est ubi &
 "usus. Atque utinam reliquis mortalibus similis moderatio,
 "abstinentiaque alieni foret; profecto non tantum bellorum
 "per omnia secula terris omnibus continuaretur, neque plus
 "hominum ferrum & arma quam naturalis factorum conditio
 "raperet. Prorsus ut admirabile videatur hoc illis naturam
 "dare quod Græci longa sapientium doctrina, præceptisque
 "philo-

ORIGIN OF GOVERNMENT. 101

THE increase of the human species in this state of society converts Man from a wandering to a stationary being: it fixes him down to a particular spot of the earth, which he is doomed to cultivate for his subsistence. Still, however, when societies of mankind became fixed and stationary, the process of agriculture was carried on at first, not by individuals upon their separate account, but by small bodies of men, with the assistance of their appendages, their women, children, and cattle; each man being understood to have right to an equal share of the produce of the cultivated field. When the offspring produced by those small communities increase so much as to render the allotment of each of them insufficient for its support, a new division must take place, which is always regulated by the chief of the territory.

“ philosophorum consequi nequeunt, cultosque mores incultæ
“ barbariæ collatione superari. Tanto plus in illis proficit
“ vitiorum ignoratio, quam cognitio virtutis.” Lib. ii. cap. 2.
Descriptio Scytharum.

WITH

WITH the multiplication of the species the difficulty of distribution of territory increases. This circumstance must, in all early ages of landed appropriation, have produced great commotions among the people. To prevent encroachment and usurpation, it became necessary to distinguish possessions accurately, and to fix their boundaries by landmarks. These objects we accordingly find to have employed the attention of all the antient lawgivers and founders of states of whom we have any history worthy of credit. Romulus made an equal division of the lands among the citizens. Numa Pompilius, who appears to have been a wise legislator, found that the division of land was an object that required his particular regard; and as, in a state growing in strength and increasing in population, it was impossible to allot a portion of land to every citizen sufficient for his maintenance, he divided all the lands into districts, to which he gave the name of *Pagus*, and over each of them appointed governors and overseers.

He

He altered the former divisions of the people, and distributed them into classes, according to their arts and professions. He encouraged trades and manual arts, and distinguished the artificers from the labourers of the ground *. The first Incas of Peru employed themselves in dividing and distributing the lands among their subjects †.

It may be made matter of wonder, how any individuals of the human species could uniformly have arrived at the possession of so transcendent a power as kings enjoy over so many warlike and high-spirited nations as Europe at this day presents to our view.

It was not by any public contract or agreement between a king and his subjects. By what fascinating charm, then, did individuals in-

* Plutarch's Life of Numa.

† Hist. des Incas, p. 48. 188.

ferior in native powers and abilities to multitudes of their species in subjection to their commands, rise into such high and paramount distinction? It may be answered, By gradual steps founded in the customs of primitive society. Acts of power consistent with usage, and naturally flowing from it, clash not with the sentiments of the people. Fears of the unhappy consequences of arbitrary rule alarm not their unsuspicious minds. Apprehensions in regard to personal safety and political liberty, are not entertained from a contemplation of future evils. These are discovered only when the abuses of power are felt to counteract the natural springs of human action. At that critical period, salutary restraints and limitations necessary for the preservation of the public welfare are, in free states, imposed on the sovereign by the people; whose spirit, rising indignant against tyranny, will not suffer itself to be crushed by arbitrary rule: whereas in those regions of the earth where the people are endued with a more pliant
and

and passive disposition, and are not so strongly impressed with a sense of the rights of nature, their liberties have uniformly fallen a sacrifice to the possessors of exorbitant power.

“ EVERY foot of land in the Mogul empire
 “ is understood to belong to him; and even the
 “ fortunes of individuals he disposes of and distri-
 “ butes at pleasure. He is heir to all his sub-
 “ jects, and leaves to the widow and family
 “ whatever portion of the effects of the dead he
 “ is pleased to bestow on them *.”

THE principle of natural equality, which neither tyranny nor injustice can totally eradicate from the human breast, is borne down by the weight of despotic power, raised through a series of ages upon the basis of the primitive custom of distribution of food in times of primeval simplicity.

* Sir Thomas Roe's Journal and Letter to the Archbishop of Canterbury.

and passive disposition, and are not so strongly
impressed with a sense of the rights of nature,
their theories have universally fallen a sacrifice to
the possession of exorbitant power.

At every loss of hand in the Mogul empire
it is understood to belong to him; and even the
fortune of individuals he disposes of and distrib-
utes at pleasure. He is heir to all his sub-
jects, and leaves to the widow and family
whatever portion of the effects of the dead he
is pleased to bestow on them. The same
The principle of natural equality, which
neither tyranny nor injustice can totally erad-
icate from the human breast, is borne down by
the weight of despotic power, raised through a
series of ages upon the basis of the patriarchal
custom of distribution of food in times of pen-
ury and famine.

St. Thomas Roe's Journal and Letter to the Archbishop of
Cashmere.

ORIGIN OF JURISDICTION.

ORIGINALLY the subjects of property were common to all the people connected together by motives of self-preservation and mutual defence. That conception of right in certain distinguished persons to regulate the distribution of the common food, had, in its natural operation upon the human mind, a powerful tendency toward the establishment of regular government. While the means of subsistence consisted of the spoils of the chase, and the natural productions of the earth, independent of culture or care, common property and common food * were syno-

* *Coed.*

nimous terms. In this respect, a material alteration in point of political arrangement happened, when mankind had learned the art of taming cattle, and derived from them the chief means of subsistence. Still the flock of the horde was common property. Every tribe or family lived together in close confederacy, and moved in a body with their herds and flocks, which were the objects of their joint care and protection. In like manner, when societies, becoming stationary, had attached themselves to particular allotments or portions of territory, and depended for their maintenance partly upon the productions of the soil by application of labour, the crop raised by the joint exertions of the community must naturally have been considered as the property of the whole society. Therefore a right of exclusive property in individuals, being as unnecessary as it was inconsistent with the dictates of natural law, received no support from the sentiments of the people. The small societies into which the people were divided, possessing in common cer-
tain

tain tracts of territory limited by the *Rei*, or *Chief*; the subject of common possession obtained among the antient Celts the name of *Coir*, or *common land*.

PRIOR to the establishment of exclusive property, either in an individual or in a certain number of men formed into a community, no disputes of a civil nature could have happened. Personal injuries and affronts, however, must have frequently existed. There being no tribunal to redress wrongs, every man was himself the judge of the degree of injury he received: the severity of his vengeance was measured by his feelings of resentment. The American Indian acknowledges no right in any individual of his tribe to direct or control his actions: there is no public authority established to enforce punishment. The chiefs assume not the power of checking revenge, nor do they think themselves intitled to moderate its excessive severity. Every man enjoys the most perfect freedom. If a
chief

110 ORIGIN OF JURISDICTION.

chief were to attempt to inflict punishment, the obnoxious person, attached to no particular place of residence, would fly into the woods, or join another tribe, and become the enemy of his natural friends: so that every individual is considered to be the avenger of the wrongs by which he is affected*. The governing law is the natural one of retaliation, which, it is expected by the offender, will be inflicted as soon as a favourable opportunity offers itself to the injured party.

THE discovery of the art of taming and rearing cattle, and the experience of the great increase of the means of subsistence thence derived, must have had the effect of converting much of the attention of the community to the cultivation of that art. The animal subdued into tameness was no longer the prey of the hunter, but became, with its offspring, a

* See Carver's Travels.

ORIGIN OF JURISDICTION. III

fresh accession of wealth to a particular society.

PROPERTY being established in a community, different ideas upon the subject of punishment began to prevail. When an act of violence was committed by a member of one tribe or family against that of another, by which great injury was sustained, or death ensued; the law of retaliation fell into disuse: the extravagance of private revenge was checked by that mode of punishment which we find to have prevailed universally among pastoral nations. An atonement for the loss of a member of the community was made, not by the death of the offender, but by a fine or penalty paid in cattle; which being an accession of wealth to the injured tribe, by an increase of the common stock of provisions, was deemed a just compensation for the loss sustained. Every tribe became answerable for the good behaviour of all its members; so that the commission of crimes occasioned the
increase

increase of the stock of the injured tribe, and a correspondent diminution of the stock of the tribe to which the aggressor belonged *. This view of the situation of pastoral society will enable us to understand these words of Tacitus: "Luitur etiam homicidium, certo armentorum ac pecorum numero, recipitque satisfactionem *universa domus.*"

* By the Brehon law of the Irish, "murders, rapes, and theft were punished by a fine called *Eric*, which was raised out of the substance of the delinquent; or, for want of that, out of the territory where the offence was committed."

Sir James Ware's Antiquities of Ireland, p. 70.

A remnant of this state of antient manners continued in force among the Highlanders of Scotland down to the year 1746. Instances of it have occurred even of a later date. When cattle were stolen from any particular village or district, the inhabitants assembled in order to trace the route of the stolen cattle. At this business they were extremely expert. If the cattle were clearly tracked into the pasture-grounds of any other village or district, the inhabitants of that district were bound, by the law of antient usage, to follow the track through their own territory, and point it out beyond its limits, or pay the damage sustained by the owners. The track being shewn in the territory of another village or district, it was then solemnly delivered over (being the mode of expression used) to the possessors of the conterminous ground. This was a wise and politic law, as it kept awake the attention of the people towards the repulsion or discovery of thieves and depredators.

IN

IN that period of society when exclusive property in individuals is established, and the permanent union of one male with one or more females is introduced, so that the father as well as the mother is known, the father becomes the head and governor of his house or family, vested with the most unlimited and arbitrary jurisdiction. His wife is his slave, and the children are his property, which he can dispose of at pleasure; for his authority extends even to the power of life and death over his children*.

THE *universa domus*, or *whole house*, of Tacitus could not mean a house composed of a father of a family possessing the most despotic authority, and of a wife and children who were deemed his slaves and subjects of property. The house mentioned by the Roman author consisted of the *gentes & cognationes hominum qui una coierunt*; for so the little societies or families who

* See Mr. Millar's *Origin of Ranks*, chap. i. last edition.

herded together, and had certain portions of land annually assigned to them by the chiefs, are described by Cæsar. The antient German house consisted not of one man and one woman and their common offspring, but formed a body of men, women, and children, connected together not so essentially by consanguinity or relation of blood, as by those ties of mutual interest which consist in a participation of the means of subsistence. Every individual was interested in the compensation which was made as an atonement for the commission of crimes.

THE descendants of the Caledonians have preserved to modern times the idea of the antient German house. The Caledonian nation consists of tribes. *A tribe* is called *Fine* *. Each tribe is divided into smaller branches or families. The word *Teadhlach*, which signifies *family*, is in a larger sense, at this day, understood to

* Φυλαι, to be born.

comprehend every person connected by the relation of blood with a particular family, distinguished by the name of the place of residence of the original stock of that family. The most conspicuous descendant from the original stock, who, by the establishment of exclusive property, came to possess the family territory by right of inheritance, was called *Cenn Tai*, or, *the head of the house*; and although the descendants of the original stock no longer reside in one place, or herd together, yet they all esteem themselves to be members of the house from which they sprung, and call the representative of the family *the head of their house*.

UPON the commission of a crime (for example, murder) by a member of one tribe or house against that of another, the natural atonement was the death of the offender. But revenge was completely appeased only by delivering up the offender to the injured tribe, that they might with their own hands inflict punishment. If

the person of the offender is protected by his tribe, and not surrendered to be made a sacrifice to rancorous resentment and cruel vengeance, dangerous feuds and animosities became the infallible consequence.

THE expedient devised for staying the hand of violence was a conciliatory address to the selfish principle, by a transference of a part of the stock of the offender's tribe, so as to become an accession of wealth, and consequently of power, to the injured tribe. It is a well-established fact, that rude societies of men living in the state we have been describing, are extremely tenacious of their property, and are ever ready to risk their lives in defence of it. Voluntary atonement would rarely happen among a barbarous and warlike people. Hence feuds and animosities would be extremely frequent between different tribes, and even between families or branches of the same tribe. "In Gallia," says Cæsar, "non solum in omnibus civitatibus, atque
" in

“omnibus pagis partibusque, sed pene etiam in
“singulis domibus, factiones sunt*.”

MEN possessed of the freedom of action, ever arrayed in the weapons of war, would not readily surrender their natural rights, to be guided by the arbitrary will of any of their fellow-members of society. The personal right of avenging wrongs and injuries continued to prevail in society, until a right of exclusive property was generally understood and established.

It is laid down by an ingenious and learned author †, that criminal is in all countries of a much later date than civil jurisdiction. This opinion appears to us to receive no support from those circumstances in the natural progress of society which lead towards the establishment of

* De Bello Gallico, lib. vi. cap. 7.

† Lord Kaimes. Law Tracts, p. 19.

jurisdiction,

jurisdiction, and the formation of a system of jurisprudence.

THE first establishment of property was marked by the common possession of a certain district, or territory, by the individuals of a family or tribe connected together by motives of mutual safety and convenience. A crime committed against any individual of a tribe, operated to rouse the resentment of all its members. Animosities so destructive and dangerous were altogether inconsistent with the principles of any sort of regular government. To subdue the minds of a rude and warlike people, to reduce them under the dominion of regularity and order, to prevail upon them to yield passive obedience to awards of punishment; was an arduous task, the accomplishment of which required more than the efficacy of human authority.

It seems to be a proposition in a great measure admitted, that no tribes or societies of
men

men have been found totally destitute of the impression of superior beings and invisible powers. The gratifications of men living in a primeval state of society are purely of a corporeal nature. Among them no temptation exists for putting in practice the deceptions of priestcraft: for no system of religion is then established. That notion of a future state seems to be the most natural, which consists in the belief of a more perfect indulgence in those gratifications which are found to be the most pleasant during life *.

* Cæsar informs us, that it was thought the discipline of the Druids had been first found in Britain, and from thence translated into Gaul; and that, for the most part, those who were ambitious of acquiring a perfect knowledge of their mysteries, travelled into Britain to learn them. "*Disciplina in Britannia reperta, atque inde in Galliam translata esse existimatur: et nunc, qui diligentius eam rem cognoscere volunt, plerumque illo discendi causa proficiscuntur.*" No doubt can be entertained, that the arts and learning of that much-famed order were cultivated among the antient Britons of the northern as well as southern parts of Albion. From Cæsar's account of the Druids we learn, that they were not only the priests, but the philosophers, legislators, and judges of the antient Gauls; that they studiously taught the doctrine of the immortality and transmigration of souls; held disputations concerning the stars and their motions,

THE introduction of exclusive property held up to view a tempting object for stirring up the

motions, the magnitude of the heavens and the earth, the natures of things, and the might and power of the immortal gods. "In primis hoc volunt persuadere: non interire animas, sed ab aliis post mortem transire ad alios;—Multa præterea de fideribus atque eorum motu, de mundi ac terrarum magnitudine, de rerum natura, de deorum immortalium vi ac potestate disputant, & juventuti transdunt."

The celebrated translator of the Poems of Ossian, accounting for the total silence of the poet with respect to religion, informs us in his Dissertation concerning the antiquity of those poems, that the authority of the Druids, however great it might have been prior to the beginning of the second century, began at that period to decline among the Caledonians; they having, in the time of Fingal's grandfather, commenced a war against the Druids, which ended in the almost total extinction of their order.

The learned translator makes mention of a dispute which Ossian, in his old age, had been led into with a Culdee, or one of the first Christian missionaries, who was desirous of making him a profelyte to the Christian doctrine. From the terms in which that dispute was couched, the translator, with great propriety, remarks Ossian's extreme ignorance of the Christian tenets. Tradition has handed down, that it was St. Patrick, the tutelar Saint of Ireland, who undertook the pious task of converting Ossian to the Christian faith. This curious relic of antient composition, which has preserved an account of the religious conversation of the pious with the heroic and poetic worthy, serves to shew, that Ossian was not only ignorant of the Christian tenets, but totally destitute of the knowledge of the religious doctrine and philosophy of the Druids; and that his notions of a divinity and of a future life were those of a
primeval

the artifices of subtle spirits to work upon the minds of a simple people, in order to obtain

primeval society, whose religious conceptions had not been methodized into any sort of regular system.

Offian says to the Culdee, or St. Patrick :

*Ciod an t ait i, 'n ear na 'n iar
Fhir ad a tha treun 's a sgoil,
Nach co math ri Flatbais De,
Mo dh'fhaoit innte fei a's coin?*

In English thus :

“ What place is it, from the East to the West, thou
“ who art an expert scholar, that is not equally good with
“ the Heaven of God, if therein deers and dogs are to be
“ found ?”

It appears from an antient poem, called *The Old Bard's Wish*, that, at a later period than the days of Offian, the same notions respecting the joys of a future state prevailed.

The Bard, after enumerating those pastoral occupations and hunting scenes which had afforded him delight in the vigour of life, expresses the situation in which he wished his body to be laid at his death. The words in the original are these :

*O! cairibh mi ri grean tra noin
Fo 'n bharach aig subhal an loin,
'S air an t sheamraig 's ann san neoinein,
'N d' thig aiflinn na h oige am choir?*

*Boidh cruit a's slige lan ri m' thaobh,
'S an sgia dhion mo shinsir sa chath,
Fosglibh an tall am bheil Offian a's Daol
Thig am feasgar a's cha bhi 'm Bard air bhrath.*

R

Ach

possession of the instruments of supereminent distinction and power. Superiority being naturally flattering to the mind, to dictate or deliver orders with authority became early an object of

Ach o! mas tig e, seal ma'n triall mo cheo,
 Gu teach na'm Bard air ard-bheinn as nach pill,
 Thugibh dhomb a chruit 's ant shlige db' iunfai 'n roid
 An sin mo chruit 's mo shlige grai, slan libh.*

In English thus :

“ O lay me before the sun, at noon, under the shade, among
 “ the clover and the daisy, where the elk doth pass. Will the
 “ dreams of youth approach me?

“ Let a harp and a brim-full shell be by my side, and the
 “ shield that covered my forefathers in battle. Open the
 “ hall where Ossian and Daol reside. The evening will come,
 “ and the Bard shall be no more.

“ But, ah ! before it comes, a little while ere my spirit shall
 “ depart to the residence of the Bards upon Ardden†, whence
 “ there is no return, give me the harp and the shell for the
 “ road. My dear harp and shell being with me, to ye all
 “ farewell !”

* The word *Ceo*, which in common language signifies *mist* or *cloudy vapour*, is here used to denote *the soul*. This informs us, that, according to the Caledonian notion of *spirit*, it was an airy substance capable of assuming a visible form; that it existed in a separate state from the body, and enjoyed, in the region of the clouds, those pursuits which gave it so much pleasure when connected with the grosser substance of the body.

† *Ardbheinn*, high mountain.

ambition.

ambition. The histories of all nations present us with evidence of the truth of the proposition, That men of uncommon penetration and sagacity have ever been successful in accomplishing their designs upon superstitious and credulous minds.

It has been observed, that savage nations have no violent attachment to their religion; that they give no vehement opposition to the propagation of new doctrines; but change with facility their own indigested opinions, for those inculcated by the studied sanctity of zealous teachers. There is reason to conclude, that the establishment of a religious system followed closely the establishment of exclusive property; and that it was the influence of religion that gave stability to regular subordination, and produced that uniformity of subjection to rule, which figured as a system of civil polity.

THE power of a chief in the state of a total community of goods, extends no farther than to

124 ORIGIN OF JURISDICTION.

the command of the tribe in the day of battle. His authority ceases upon the return of peace. But the influence of a chief among a people who have acquired the art of taming and rearing cattle, is more extensive than in the primitive state. The distribution and regulation of territory, with the exclusive possession of a certain portion of the stock of the tribe, are superadded to military command. Notwithstanding this apparently arbitrary power, yet the authority of the chief is too weak to bring criminal offenders to punishment. How was this great object to be accomplished?

WE are told by Tacitus, that capital accusations were prosecuted before the great council of the nation, and punishments were inflicted more or less severely according to the nature of the offence. Smaller crimes were punished with the loss of goods, which among a pastoral people consisted of cattle. In the great council, persons of eminence and distinction were chosen, and
invested

invested with a delegated power to administer justice in districts and villages. These delegates were assisted by numerous attendants selected from the body of the people, who aided them with their advice, and furnished the strength which carried their authority into execution. “*Licet apud concilium accusare quoque et discrimen capitis intendere. Distinctio pœnarum ex delicto; proditores et transfugas arboribus suspendunt, ignavos et imbelles, et corpore infames cœno ac palude, injecta insuper crate, mergunt. Diversitas supplicii illuc respicit, tanquam scelera ostendi oporteat dum puniuntur, flagitia abscondi. Sed et levioribus delictis pro modo pœnarum, equorum pecorumque numero convicti multantur: pars multæ regi vel civitati, pars ipsi qui vindicatur vel propinquis ejus exsolvitur. Eliguntur in iisdem conciliis et principes, qui jura per pagos vicosque reddunt. Centeni singulis ex plebe comites, consilium simul et auctoritas, adsunt*.*”

* Tac. Germ. cap. 12.

126 ORIGIN OF JURISDICTION.

AMONG the antient Germans, the chief or prince was not always the general or leader in the day of battle. The introduction of exclusive property enabled the chief to procure hereditary rank, and to enjoy the respect thence derived, but not to command the esteem of personal accomplishments. "Reges ex nobilitate, duces ex virtute, sumunt*." From the same admirable author we learn, that a hereditary distinction of ranks took place; that a constitution of state was understood; and that fines and penalties inflicted for crimes were in part applied to the use of the king or the state, and partly to the injured person and his relations. In this manner the whole community was interested to unite their efforts for the preservation of order and the suppression of crimes.

THEIR form of government was of a mixed nature: the free spirit of republicanism was its prevailing feature. "De minoribus rebus prin-

* Tac. Germ. cap. 6.

" cipes

“ cipes consultant, de majoribus omnes ; ita
 “ tamen, ut ea quoque quorum penes plebem
 “ arbitrium est, apud principes pertractentur.—
 “ Ut turbæ placuit, confidunt armati.—Mox
 “ rex vel principes, prout ætas cuique, prout
 “ nobilitas, prout decus bellorum, prout facundia
 “ est, audiuntur, auctoritate suadendi magis quam
 “ jubendi potestate *.”

It is evident that the power of the kings or princes was limited, and subject to popular control. Every freeman went to the national assembly. He took his seat accoutred in his arms, and with unrestrained freedom proposed his opinion upon the subject matter of deliberation. The dictates of good sense, derived from personal experience, tried abilities, and acknowledged reputation, determined national measures. The kings had no power to confine, or inflict corporal punishment or censure upon, any man.

* Tac. Germ. cap. 11.

128 ORIGIN OF JURISDICTION.

The office of the prince carried no terrors to the minds of the people. The power of inflicting punishment was lodged in other hands.

THE antient Germans were not altogether strangers to the cultivation of the ground. They all led a wandering life, and entertained no notion of permanent property in land. Their wealth consisted in herds and flocks. The office of priest was known among them. The establishment of property and of a clerical order are intimately allied. The influence of that order, it will be found, is attended with a more powerful effect than that of any civil authority, in breaking the untamed spirit of rude minds, and rendering it subservient to artificial rule.

THE assemblies of the German people exhibit a picture of rational freedom. As their decisions were guided by motives of general good, a ready obedience and submission might be expected to be the natural consequence. We find,

find, however, that the civil power determined public measures; yet they left the support of them to the feelings of the people. “Ubi quis
 “ex principibus,” says Cæsar, speaking of the same people, “in concilio dixit se ducem fore;
 “*qui sequi velint profiteantur.* Confurgunt hi
 “qui et causam et hominem probant, suumque
 “auxilium pollicentur, atque ab multitudine col-
 “laudantur: qui ex iis secuti non sunt in deser-
 “torum ac proditorum numero ducuntur; omni-
 “umque iis rerum postea fides derogatur*.”

A SENSE of duty, or a desire of glory, excited to action. No compulsive measures were put in practice. The leader conducted a free and willing people. Disgrace and infamy were the lot of those who professed themselves willing to follow him, but deserted his standard: yet no corporal punishment was inflicted by the civil authority.

* Cæsar de Bello Gallico, lib. vi. cap. 23.

THE priests were constituent members of the assemblies of the people. Their authority was highly respectable. They seemed to hold the station of presidency. They commanded silence, and kept order. The power of correction was in their hands. "Silentium per sacerdotes, quibus tum et coercendi jus est, imperatur*." — "Ceterum neque animadvertere neque vincere, neque verberare quidem nisi sacerdotibus permiffum; non quasi in pœnam, nec ducis juffu, fed velut Deo imperante†."

THE history of rude nations furnifhes ample testimony of the fact, that upon the first attempts towards the formation of a religious fystem, thofe who affumed the f acred character of teachers of religious duty and hallowed obfervances, ever found means to inculcate upon the minds of the people, that they were the pecu-

* Tac. de Mor. Germ. cap. 12.

† Ibid. cap. 7.

liar favourites of Heaven; and that to them alone the Deity dispensed a revelation of his will, and committed the sacred trust of executing his commands. Thus, it was the efficacy of the command of the Deity, and not that of Man's authority, which prevailed on the antient Germans to submit to any degree of corporal punishment.

THE Gauls were much farther advanced in the practice of those arts which are derogatory of the natural rights of the people; arts, whose tendency is to obliterate the feelings of original equality, to depress the mind by diminishing its freedom of action, to debase the sentiments of the great body of the people by inculcating a sense of inferiority, and upon this artificial fabric to raise the superiority and importance of individuals beyond the standard of natural right. The rights of nature being effaced by a system of factitious reverence and respect, the species come to be divided into men

of dignity and men of debasement. It is the province of the first to announce commands: the latter are destined to perform the mechanical office of carrying those commands into execution. This system was established among the Gauls in the days of Cæsar: “Nam plebs pene fervorum habetur loco, quæ per se nihil audet et nulli adhibetur consilio. Plerique, quum aut ære alieno, aut magnitudine tributorum, aut injuria potentiorum premuntur; sese in servitutem dicant nobilibus: in hos eadem omnia sunt jura, quæ dominis in servos*.”

THE Volcæ, of all the Gaulish nations, preserved the virtue of their ancestors: “Ac fuit antea tempus, quum Germanos Galli virtute superarunt, et ultro bella inferrent.” Cæsar accounts for the preservation of the virtue of the Volcæ, and its decay among the other Gallic nations, with a nervous brevity, in which, how-

* Cæsar de Bello Gallico, lib. vi. c. 13.

ever,

ever, that correctness of judgment, that beautiful simplicity of diction in which he excelled, are conspicuous: “Volcæ Tectosages occuparunt, “atque ibi confederunt. Quæ gens ad hoc “tempus iis sedibus se continet, summamque “habent justitiæ et bellicæ laudis opinionem, “nuncque in eadem inopia, egestate, patientia, “qua Germani permanent: eodem victu, et “cultu corporis, utuntur. Gallis autem provin- “ciæ propinquitas, et transmarinarum rerum “notitia, multa ad copiam atque usus largitur: “paullatim assuefacti superari, multisque præliis “victi, ne se quidem ipsi cum illis virtute com- “parant*.”——“Viri quantas pecunias ab uxori- “bus, dotis nomine acceperunt; tantas ex suis “bonis, æstimatione facta, cum dotibus commu- “nicant. Hujus omnis pecuniæ conjunctim “ratio habetur, fructusque servantur. Uter “eorum vita superarit; ad eum pars utriusque,

* Cæsar de Bello Gallico, lib. vi. c. 22.

“ cum fructibus superiorum temporum, per-
 “ venit *.”

CÆSAR found the Britons who inhabited the maritime parts of the island which he visited, to be similar in manners to the Gauls, and he conceived them to be colonies of the Belgic nation. The use of money was known to them:
 “ Utuntur aut ære, aut annulis ferreis ad certum
 “ pondus examinatis, pro nummo. Nascitur ibi
 “ plumbum album in mediterraneis regionibus,
 “ in maritimis ferrum; sed ejus exigua est copia:
 “ ære utuntur importato.”——“ Ex his omnibus
 “ longe sunt humanissimi qui Cantium incolunt;
 “ quæ regio est maritima omnis; neque mul-
 “ tum a Gallica differunt consuetudine †.”

THE inhabitants of the interior parts of Britain differed widely in manners, and in the

* Cæsar de Bello Gallico, lib. vi. cap. 17.

† Ibid. lib. v. cap. 10.

arts of life, from those inhabiting the maritime parts of the southern end of the island. The first, ignorant of agriculture, lived on milk and flesh, and were clothed in skins: "Interiores plerique frumenta non ferunt, sed lacte et carne vivunt; pellibusque sunt vestiti*."

THE Gauls, it is evident, had in the time of Cæsar arrived at the knowledge not only of exclusive property in individuals, but were acquainted with the use of money, and were in some degree conversant with commercial dealings. It might be expected, that among such a people the authority of civil magistrates would be so well established, as to be sufficient to preserve order and enforce subjection to general rules. We find, however, that civil authority was too weak to restrain violence, too feeble to produce obedience even to civil awards, and altogether insufficient for the suppression of crimes. These

* Cæsar de Bello Gallico, lib. v. cap. 10.

great objects of state policy were accomplished by the power and authority of the sacerdotal order.

CÆSAR, recounting the power and authority of the Druids, expresses himself in this manner :
 “ Illi rebus divinis interfunt, sacrificia publica ac
 “ privata procurant, religiones interpretantur :
 “ ad hos magnus adolescentium numerus, disci-
 “ plinæ causa, concurrunt ; magnoque hi sunt
 “ apud eos honore. Nam fere de omnibus con-
 “ troversis, publicis privatisque, constituunt : et,
 “ si quod est admissum facinus ; si cædes facta ;
 “ si de hæreditate, si de finibus controversia est ;
 “ iidem decernunt. Præmia pœnasque consti-
 “ tuunt. Si quis, aut privatus aut publicus,
 “ eorum decreto non steterit ; sacrificiis inter-
 “ dicunt. Hæc pœna apud eos est gravissima.
 “ Quibus ita est interdictum, ii numero impio-
 “ rum ac sceleratorum habentur ; iis omnes de-
 “ cedunt, aditum eorum sermonemque defu-
 “ giunt, ne quid ex contagione incommodi acci-
 “ piant :

“pian; neque iis petentibus jus redditur, neque
“honos ullus communicatur *.”

HENCE we may learn, that the Druids not only presided over all religious institutions, but were the interpreters of the laws, which received execution from the efficacy of their authority. They judged in all causes, whether criminal or civil. Their sentence was esteemed so sacred, that whoever refused to give it complete obedience, was excluded from assisting at their religious rites; was held in the highest execration and abhorrence; and, in the midst of society, led the life of a person afflicted with a contagious distemper, who could not be approached without contamination and death. He was denied all manner of legal redress for either injury or injustice committed against him. The hope of enjoying any mark of honour or reputable distinction was cut off from him for ever.

* Cæsar de Bello Gallico, lib. vi. cap. 13.

SUCH were the calamitous effects of this direful proscription, that one would imagine the great Cæsar was prophetically describing the baleful excommunications and terrific anathemas launched forth in after-times by the Romish Pontiff, in the zenith of his despotic sway over the consciences of men. The purity and simplicity of the Christian religion were not sufficient, in times of ignorance and superstition, to guard against the unhappy influence of pious frauds.

WE find that the wisest legislators of early times, and the ablest reformers of rude manners, have uniformly employed the religious opinions and superstitious fears of the people as instruments to work out their designs. The princes of rude nations found it necessary, in order to enforce authority, to assume a sacred character, and to unite in their persons the offices of king and priest. The acknowledgment of the power of a prince over the ceremonies of religion, and the regulation

regulation of public worship, influenced the people to pay a sacred regard to his civil institutions, and taught them to reverence his laws, as the dictates of a mind endowed with wisdom beyond the reach of human capacity.

RUDE nations leading wandering lives, are liable to frequent vicissitudes of fortune. They command the means of subsistence, and enjoy repose, or contend with the hardships of war, and the distresses of want. The experience of the human mind naturally leads into a belief, that all motion proceeds from some being endued with the power of action. The strength and energy of the invisible agent are measured by visible effects, which, if unhappy and calamitous, carry terror and dismay. If the superior being is angry, methods are devised to appease his displeasure, and turn away his wrath. These consist of obscure ceremonials, words of flattery*,

* *The Praise of God*, by the *Senghael*, or old Caledonian, is curious; and as it is applicable to this subject, it is here given

or offerings of sacrifices of the most valuable and estimable things among the people. The history

as repeated in the Highlands of Scotland. It will be observed, that the Caledonian's notion of God was totally inconsistent with the Christian creed, and that his conceptions reached no farther than the Deity's being in the most complete possession of those qualities which figured in his mind as the perfections of a corporeal and intellectual being.

O Dhe, tha' use mor, garbh, ladir. Tha do dhianadas co uam-basach ri dianadas famb'ir. Tha t innleachdan coflach ri innleachdan gaisgaich. Tha thu co lua' ri fiadh air beinn, na ri breac 's a'n uisge. Tha do chlaisneachd co ma' ri claisneachd na hearba. Tha do shuilin na sgeara na fuilin an fhirian, tha gun choimeas an ealt na speuran.

Translated it runs thus :

“ O God, thou art large, robust, and strong*. Thy
“ actions are as wonderful as the actions of a giant†.
Thy

* The learned commentator on the works of Horace for the use of the Dauphin has adverted to the word *Latro*, in one of his annotations, in these terms :

“ *Latro.*] Nomen hoc alii deducunt, seu quod latenter infidias struat, seu quod a latere adoriatur prætereuntes. *Isidor. Fest. Prisc.* Alii quod ferum ad latus habeat, perinde ac satellites regis aut principis latus stipantes, qui inde *Latrones* olim dicti, quasi *Laterones*. *Varro. Servius.* Alii etiam aliter.” *Lib. I. Sat. iii. l. 106.*

The philologists have been at a loss, whence to derive the word *Latro*. Its original is evidently the Galic word *Lader*, which literally signifies a *strong man*. The adjective *Laderan* is expressive of a *bold impetuous forwardness*. So *Latro*, in the Latin language, came to denote a *robber*, or a man whose strength emboldened him to commit acts of plunder and depredation.

† *Fambhir*, a giant. Admiration is a pleasant passion of the mind. To its gratification may perhaps be ascribed the propensity observed in mankind to exaggeration. In whatever light this may be viewed, we find among antient nations
traditionary

ORIGIN OF JURISDICTION. 141

of rude nations furnishes the most ample testimony, that human sacrifices were deemed among them the most acceptable to the gods. Reli-

“Thy stratagems* are like the stratagems of a hero.
“Thou art as swift as a deer on the mountain, or a fish
“in the waters. Thy hearing is as good as the hearing
“of a roe; and thy eyes are sharper than the eyes of
“an eagle, which is without a rival among the birds of
“heaven.”

traditionary accounts of the existence of men of huge size and enormous strength. In the Pentateuch, Moses records, that “when men began to multiply upon the face of the earth, and daughters were born unto them; the sons of God saw the daughters of men that they were fair; and they took them wives of all that they chose.” He adds, “There were giants in the earth in those days; and also after that, when the sons of God came in unto the daughters of men, and they bare children unto them, the same became mighty men, which were of old men of renown.” *Genesis*, chap. vi. ver. 1, 2, 4.

The men who were heads of the children of Israel, and whom Moses had sent to examine the land of Canaan and its inhabitants, made this report: “The land through which we have gone to search it, is a land that eateth up the inhabitants thereof, and all the people that we saw in it are men of a great stature. And there we saw the giants, the sons of Anak, which come of the giants; and we were in our own sight as grasshoppers, and so we were in their sight.”

Numbers, chap. xiii. ver. 32, 33.

The sons of Titan and Tellus, according to antient fable, were giants of monstrous size, who waged war against Jupiter and the gods. One of them, called Briareus, was feigned by the poets to have an hundred arms and fifty heads.—We find, that among the Caledonians a similar tradition prevailed. A Briareus was not unknown in their legendary tales. But his heads were not so numerous as those of the antagonist of Jupiter: the body of the Caledonian Briareus supported only five heads.

* This alludes to the qualities of cunning and artifice in war, which are esteemed virtues among rude nations.

gious

gious frauds persuaded men to submit to death, to appease an angry deity.

IN the island of Formosa, it is forbidden to bring forth children before the age of thirty-six or thirty-seven years. If a woman becomes pregnant before that period, a *priestess* lays her upon a table, and presses her until she parts with the child*. What ends cannot superstitious awe and religious terror accomplish, when guided by the sanctimonious arts and pious stratagems of the peculiar favourites of Heaven?

THE power of the Druids among the Gauls was greater than that of the priests among the antient Germans; yet the priests among the latter presided in the public assemblies of the people, and had the power of regulating and enforcing order. To them belonged the exclusive privilege of

* Candidius's Account of Formosa, in Churchill's Voyages.

ORIGIN OF JURISDICTION. 143

passing censure, ordering confinement, and inflicting corporal punishment. What the joint efforts of the princes and people in their assemblies could not effectuate, was executed with facility by the priests. The authority of the chiefs and princes reached not the suppression of crimes. Smaller offences were left to their decision, as has been before observed, with the assistance of a numerous body of the people.

THE Getæ paid so great a veneration to their high-priest, that he was esteemed a divinity*.

WHERE priests have found means to establish themselves as religious teachers among the American Indians, they are regarded with the highest veneration. They too are possessed of supernatural powers, being, in the apprehension of the people, able to foretell future events†.

* Strabo, lib. vii.

† See Carver's Travels, p. 382.

The belief of this faculty of prediction, and of a familiar correspondence and intercourse with the worshipped deities, must ever operate as a powerful engine of despotism over the minds of men.

It is curious to observe, that actions which cannot be accounted for from natural causes, and are therefore supposed to be the effect of supernatural agency, or communication with invisible beings, are in the Galic language called *Druiachc*; intimating that supernatural power was held to be in a peculiar manner attached to the sacred order of the Druids. A fiery meteor of uncommon magnitude and splendor appearing in the heavens, is called by the Caledonians *Drueg*, which literally means *the death of a Druid*; importing, that Nature herself, or the beings who were supposed to preside over the material and animal world, were in a particular manner concerned about so great a catastrophe.

A POEM

A POEM still rehearsed by many people in the Highlands of Scotland, preserves satisfactory evidence, that the antient Caledonians believed the Druids to be endued with the spirit of prescience, or a knowledge of future events. The subject of the poem to which we allude is the death of Dermid, a hero of the Fingalian race, who was killed at the hunting of a boar. The Galic words are :

*Gun d' thu'airt na Druian gun tla
Gu'm bithidh do bhas aig a mhuic.*

“ That the Druids had foretold without
“ pity, that your death should be occa-
“ sioned by a boar.”

THE universal persuasion, that the professors of religion in early ages were endued with supernatural powers, and the spirit of divination, communicated to them so transcendent an influence over the human mind, as was fully sufficient to

U

tame

tame the spirit of wild men, to reduce them to order and regularity of conduct by working upon their superstitious fears, and thus terrify them into submission to the awards of judicial authority.

Silvestres homines facer interpreſque Deorum
Cædibus et victu fædo dètèrruit Orpheus ;
Diſtus ob hoc lenire tigres rabidoſque leones *.

ORPHEUS was a celebrated name in the fables of antiquity. Rivers ſtopped their courſe by the enchantment of his muſic. Rocks and ſtones moved at the harmony of his lyre. The charms of his melody ſoftened the fierceneſs of lions and tygers. The magic of his numbers reclaimed wild men, ſubſiſting as cannibals in woods and caves, from their inhuman courſe of life. But Orpheus was a particular favourite of Heaven ; being to the people whoſe conduct he wiſhed to regulate, the ſacred interpreter of the will of the Gods.

* Horat. de Arte Poetica.

THE great lawgiver of the Jews was endowed with supernatural gifts. He greatly surpassed in magical skill the wise men and forcerers of Egypt, that renowned land for science. Being selected by the Deity as the leader and deliverer of his chosen people, and having his instructions communicated to him directly from Heaven, it was no wonder he had gained the confidence of the Jewish nation. “ And Moses went up unto God: and the Lord called unto him out of the
 “ mountain, saying, Thus shalt thou say to the
 “ house of Jacob, and tell the children of Israel:
 “ Ye have seen what I did unto the Egyptians,
 “ and how I bare you on eagles’ wings, and
 “ brought you unto myself. Now, therefore, if
 “ ye will obey my voice, indeed, and keep my
 “ covenant, then ye shall be a peculiar treasure
 “ unto me above all people: for all the earth is
 “ mine. And ye shall be unto me a kingdom
 “ of priests, and an holy nation. These are the
 “ words which thou shalt speak unto the children
 “ of Israel. And Moses came and called for

“ the elders of the people, and laid before their
 “ faces all these words which the Lord com-
 “ manded him. And all the people answered
 “ together, and said, All that the Lord hath
 “ spoken we will do. And Moses returned the
 “ words of the people unto the Lord*.” The
 people being thus prepared, received the ten
 commandments from Moses, who came down
 from Mount Sinai, and spoke the words of God
 to the people.

FROM one of the verses quoted above we
 may learn, that the priests or ministers of reli-
 gion were held in high veneration, and that
 their condition was the most enviable among the
 people. The promise of the Jews becoming a
 kingdom of priests, and a holy nation, enjoying
 the supremely happy privilege of a general
 communication and intimacy with the Deity,
 was held out as an irresistible inducement for the

* Exodus, chap. xix. ver. 3—8.

nation's embracing with the most sacred regard the laws then promulgated; the consummate wisdom of which sufficiently bespeaks their divine original.

THE method dictated to Moses, as the servant of the true God, in order to impress upon the minds of the Jews, who were destined to be in after-times a segregated and peculiarly marked people, the beauty and utility of order and regularity, was, from the dictates of wise policy, adopted by the antient legislators of other nations, in whose favour a particular interposition of Providence was not necessary for accomplishing the great purpose of the Creator of the universe.

ROMULUS, the founder of Rome, was the supposed son of Mars. When an infant, his life was miraculously preserved by a she-wolf which suckled him, and a wood-pecker which fed him. After his death he was consecrated, and worshipped as a god, under the name of *Quirinus*.

NUMA,

150 ORIGIN OF JURISDICTION.

NUMA, the successor of Romulus, was a most religious prince, and esteemed to be most highly beloved of the Gods. He instituted several orders of priests, and settled the rites and ceremonies of religion, by the special direction of the goddess Egeria, to whom the female sex superstitiously sacrificed for her propitious regard in mitigating the sorrow entailed upon womankind for the original disobedience of our general mother.

PLUTARCH, in his Life of Numa, says, there is no absurdity in the account which some give of the proceedings of Lycurgus and Numa, and other famous men; who being to manage the intractable and perverse disposition of the multitude, and designing to introduce great innovations in their political establishments, pretended a divine authority for their actions, entirely from a regard to the welfare of those who were thus to be deceived into their own happiness. In another place this valuable author, after mentioning that the city of Rome was a receptacle of
of

ORIGIN OF JURISDICTION. 151

of men of the most daring and warlike spirit, who had, by frequent incursions upon their neighbours, increased in numbers, and risen into power, so that they became turbulent and licentious, adds: Numa, judging that it was no slight undertaking to civilize the furious and unruly spirit of this people, called in the assistance of religion; and chiefly by the sacrifices, processions, and religious dances, which he appointed, at which he officiated in person, and in which an agreeable amusement was mixed with solemn devotion, he soothed the minds of the people, and rendered their fiery martial temper more cool and sedate; and sometimes he filled their imaginations with religious terrors, pretending that strange apparitions were seen, and dreadful voices heard; whereby he subdued their minds, and rendered them submissive by superstition.

THE dispensation of justice by the ministers of religion still prevails among rude nations,
of

of whom modern voyagers have given accounts*.

THE inhabitants of the Friendly Islands, in the Pacific Ocean, have made a considerable progress in the arts of civilization. They have brought agriculture to some degree of perfection. Their women manufacture cloth, and other articles of convenience and ornament, which they finish with great neatness and taste. With regard to their form of government, our late navigators† observed that a subordination, resembling the feudal system of our ancestors in Europe, was established among them. They were informed, that the king's power was unbounded; and that he had the absolute disposal of the lives and property of his subjects. Besides the great king, there are several petty sovereigns, or chiefs, whom the people denominate lords of the earth, and also of the sun and sky. The royal family

* Goguet. Origin of Laws, book i. art. 1.

† Captains Cook, Clerke, and Gore.

assume the name of *Futtafaihe*, from the god distinguished by that appellation.

THE natives frequently cut off one or both of their little fingers, which they offer as a propitiatory sacrifice to the Deity, in order to procure their recovery from dangerous maladies. In like manner, it is common for the lower class of people to cut off a joint of one of their little fingers, on account of the sickness of the chiefs to whom they respectively belong*.

It cannot be doubted, that the prodigious respect and reverence with which these simple people regard their king and chiefs, arise from their supposed participation of the nature and excellence of the deities whom they worship.

GREAT veneration has been paid, in all ages, to the ministers of religion. In times of simplicity

* Captain Cook's last Voyage to the Pacific Ocean, chap. xi.

154 ORIGIN OF JURISDICTION.

and ignorance, they were regarded with the most sacred awe and the most superstitious reverence. The dispensation of justice was readily conceded to persons believed to be endowed with divine authority. The hand of the civil magistrate acquired strength by the supposed co-operation of the deities of the people. A system of subordination ripened into regular form by slow degrees. The exercise of power establishes authority. The execution of acts of jurisdiction implies possession of the engines of coercion. The influence of the clerical body arrived at its highest pitch of predominancy, at that period when the minds of the people were most absorbed in dark ignorance and blind superstition. Their power diminished, with every additional ray of light which beamed truth upon the human mind. As the power of the lay chieftain or prince gained ground in the establishment of civil government, and men's attention became more engaged in enforcing regularity by civil ordinations, clerical influence decreased in efficacy,

cacy, and considerations of a temporal nature occupied in great part the place of religious awe and superstitious terrors. At length mankind, become inured to obedience, yield submission to the dictates of the civil magistrate, without the impression of divine command: the great body of the people combine to support civil authority, from a general sense of the necessity of suppressing crimes, and of the utility of a regular administration of justice.

every part consideration of a temporal nature occupied in great part the place of religious law and superstitious errors. At length mankind became inured to obedience, paid submission to the dictates of the civil magistrate, without the interposition of divine command: the great body of the people combine to support civil authority, under a general sense of the necessity of suppressing crimes, and of the utility of a regular administration of justice.

O F

C O N T R A C T S.

AUTHORS of high credit and reputation have differed in their accounts respecting the regard paid by rude nations to the principles of equity and justice. Herodotus says, that the Arabians were remarkably tenacious of their contracts*. The barbarous nations who subverted the Roman empire, it has been affirmed, were rigid observers of their promises, and that veracity constituted one of their most remarkable qualities. Thence Montesquieu† derives many of our ideas of modern honour. The barbarous nations reproached the Romans with lying and falsity. When they wanted to express their opinion of the bad qualities of an

* Herodot. lib. iii.

† Esprit des Loix, l. xxviii. c. 20.

enemy,

enemy, falsehood particularly, they called him a Roman*. Kalm, in his Travels to North America†, and Ulloa, in his Voyage to South America‡, agree, that fidelity and veracity are remarkable qualities in modern savages. Strabo§ says, that the Massagetæ paid a strict regard to their agreements, and avoided fraud and deceit.

ON the other hand, several authors have accused rude nations of inconstancy and want of faith. Livy|| speaks of Hasdrubal as skilled in the perfidy of those barbarous nations among whom he had waged war for so many years: “Peritus omnis barbaricæ, et præcipue omnium earum gentium in quibus per tot annos militabat, perfidiæ.” “Ingenia barbarorum” he

* Robertson's Hist. vol. I. chap. v. note 2.

† Vol. I. p. 77. 8vo edit. Lond. 1772.

‡ Book viii. chap. 9.

§ Lib. xi.

|| Lib. xxv. cap. 33.

calls,

calls, in another place, "*vana et mutabilia.*" Ammianus Marcellinus, in his description of the Huns, ascribes to them inconstancy and deceit: "*Per inducias infidi, inconstantes.*" "*Fluxa, ut est barbaris, fide**," are the words of Tacitus.

It would seem, from the apparent contrariety of opinions delivered by these authors with respect to the virtues of rude nations, that their qualities are not uniformly alike in similar situations and circumstances. We are inclined, however, to think, that these accounts are not altogether incapable of reconciliation.

MAN living in that state which has got the name of savage, is a political animal. The barbarian partakes of a mixed character. The former is unacquainted with the corruptions of exclusive property: the mind of the

* Taciti Hist. l. iii. c. 48. See Falconer's Influence of Climate, &c. book vi. chap. i.

latter

latter has learned to separate his interest from that of the public. In proportion as the selfish principle operates on the human will, the love of equality, which forms a distinguishing characteristic of savage tribes, suffers a decay. The engagements of a savage tribe, being of a public nature, are observed with fidelity by all its members. The interest of the individual is never separated from that of the community at large. No avaricious views interfere with his principles of action. The delivery of symbols of agreement binds him to the observance of the articles of treaty, until the compact is dissolved by public determination.

THE division of a great tribe into small communities or families, and the allotment of a separate stock to each of these communities, produced an important alteration in the manners of the people. Accordingly we find, that all barbarous nations are addicted to robbery and plunder. They are much corrupted in
their

their political capacity. They have an insatiable desire of possessing themselves of the subjects of property belonging to others. Piracy and robbery were not employments of reproach, but of honour, among the antient Greeks. The Arabs have been from the earliest accounts esteemed a nation of thieves. The antient Scythians, the Saracens, and the Alans, were of a similar disposition. The northern barbarous nations bore a similar character*. Beyond the frontier of their states the Gaul and the German were thieves and robbers. To make incursions into the territory of neighbouring nations, carry off their cattle, and lay waste their country, were deemed actions of valour and renown. Cæsar says of the Suevi: "*Civitatibus maxima laus est quam latissimas circum se vastatis finibus solitudines habere. Hoc proprium virtutis existimant; expulsos agris finitimos cedere, neque*

* See Falconer's Remarks on the Influence of Climate, &c. book vi. chap. 2. and the authors there quoted.

“quemquam prope se audere consistere*.” Pomponius Mela gives a similar account of the Germans †. The Caledonian tribes, down to a late period, were addicted to predatory excursions. Dr. Stuart, in his “View of Society in Europe ‡,” has, with his usual acuteness, produced irrefragable evidence of this trait of barbarous manners. He quotes an ordinance in the Gentoo laws, which specifies the share of booty or plunder due to the magistrate, by whose command and assistance depredations had been committed upon another province.

THE savage, though ignorant of private property, understands his political interest. To him no inducement presents itself for infraction of treaty, but what is derived from state policy. A people acknowledging rights of exclusive pro-

* Cæsar. Comment. lib. vi. cap. 21.

† Pomp. Mela. Descriptio Germaniæ.

‡ Page 165, 2d edit.

perty,

perty, feel themselves affected by various motives for departing from the faith of engagements. The introduction of exclusive property stirs up new principles of action. It establishes an influence independent of personal talents. It assumes the place of merit, and lays the foundation of a permanent though artificial superiority. The acquisition of property, which commands not only the means of gratifying corporeal appetite, but brings to the possessor lasting marks of distinction, becomes an object of much moment, and of earnest pursuit. That sense of political justice, which is ever alive in the breast of the savage, is in the barbarian perverted by covetousness, with its attendant vices. Here, however, it behoves us to distinguish between that stage of society when rude tribes, having acquired the knowledge of taming and rearing cattle, had formed themselves into small communities or families, linked together by a common interest, and possessing their herds and flocks in common, and that later period of society, when, by

the establishment of private exclusive property in individuals, the interest of each is contracted into considerations of personal advantage.

IN the situation where private property is unknown, the barbarian partakes more of the political than of the selfish animal. His chief attention is directed towards the preservation of his herds and flocks, the common stock of the society. As he has not learned to appropriate to himself exclusively any part of those subjects which constitute the wealth of the community, he is as yet unacquainted with the arts of traffic. His actions are determined by a sense of general approbation. His rule of conduct is the general will. Like the savage, he derives his chief felicity from the applause of his tribe. To gain their esteem, is his most ardent ambition. Hence it is, that Man, in the first stage of barbarism, is attentive to the dictates of natural justice, within the limits of the territory of his tribe: beyond these, he is a thief, a robber,

robber, and a plunderer. The more dexterity, cunning, and address, he displays in the occupation of a robber, he is regarded as the more estimable member of the community.

It is worthy of remark, that in the Galic language the word *Cieall*, which signifies *common sense*, is compounded of *Co*, common, and *Feall*, stratagem or deceit; those qualities in which consisted the wisdom of the barbarian.

WE are inclined to think, that the barbarian, in the first stage of his departure from the state of the savage, is, like him, disposed to pay a punctilious reverence to his engagements. View him upon the establishment of private property in the individual, and his public virtues are not so conspicuous. A strong desire of gain seizes his heart. He disregards the obligations of promises, contracts, or agreements, if they bring not immediate advantage. To outstrip his party in negotiation, to over-reach his fellows

in

in contracts or agreements of a commercial nature, gratifies at once his passion of avarice, and flatters his conceit of his own excellence. He prides himself upon his endowments of superior cunning and address. His observance of engagements lasts no longer than a favourable opportunity of catching some immediate advantage offers itself. Plutarch* says of the Gauls, that they were most insatiable as to the desire after riches: *Οι δε Γαλαται γενος ἀπληστοτατον χρηματων οντες.* Ammianus Marcellinus says of the Huns, that their passion for the precious metals was unbounded: "Auri cupiditate immensa flagrantes." Rude in their manners, fierce in their dispositions, the utility of distributive justice makes too weak an impression to prove a restraint upon their desires. The barbarian practising the system of exclusive property, unwillingly acknowledges any general standard for guiding his actions. Submission to general rules is re-

* Life of Pyrrhus.

served for that æra of state policy when the hand of the magistrate wields the terrific trident of the gods; and when, by the establishment of a solemn and public worship, the minds of men are enured to the observance of sacred rites; which begetting the habit of obedience, operates most powerfully in bringing men to acknowledge the authority of government, and to yield submission to the temporal as well as the spiritual ordinances of the magistrate.

WHILE property was possessed in common by the members of a tribe or family, few disputes could have arisen concerning matters of civil right. Any difference which might have subsisted in relation to contracts or engagements of a civil nature, could rarely have been deemed of so great importance as to require the interposition of the temporal and spiritual magistrates to enforce justice.

PERSONAL

PERSONAL injuries were redressed, to prevent dangerous feuds and animosities; but promises or engagements relative to the exchange of commodities, in which consisted the commercial dealings of mankind before the invention of money, were left to be fulfilled at the will of the contracting parties. Right of exclusive property must have been well understood; and that sort of traffic which consisted in the exchange of one commodity for another, must have been frequently put in practice, before the establishment of civil judges vested with public authority to administer justice. It cannot be made matter of doubt, that, before the establishment of civil courts, contracts and agreements took place with regard to the transference of moveable subjects from one hand to another. But if those agreements were not enforced by any civil magistrate, how were such matters regulated?

IN

IN the infancy of traffic, men could not enforce the performance of covenants. It depended upon the joint will of the contracting parties, whether their agreement should have effect. Failure in regard to engagements would often be attended with inconvenience, or loss, to one or the other of the parties concerned. If the power of the chiefs or princes was not sufficient to command performance, or if civil transactions were considered as matters of too little moment to call forth the exertions of the chiefs and assemblies of the people, breach of covenant must have remained without remedy. Some method must have been devised to secure the execution of civil contracts. A most natural, and at the same time a most effectual one, was adopted, which was sufficient, without the aid or intervention of a judge, to prevent loss through breach of agreement. This purpose was accomplished by means of a pledge, which was a subject of value deposited by the obligee as a security of performance of his engagement to the obligor. The regula-

Z

tion

tion of this mode of security was a matter of great moment in the earliest state of traffic.

THAT a paction, or an agreement which consisted in words, was not considered as effectually binding upon the parties in early society, we are furnished with evidence from the antient law of the Romans. If a paction, or mutual agreement between two parties, consisted merely in words, "in nudis placiti vel conventionis finibus," without the delivery on either side of any commodity or subject of use, the power of the judge was not deemed sufficient to reach the case. In a more advanced state of jurisprudence, when the judge found his authority gaining more sway over the minds of the people, a certain form of words, which got the name of *Stipulation*, was prescribed. That form being used, the judge declared he would hold it as a binding contract. By this time society was considerably advanced in the arts of civil polity: judicial proceedings had acquired respect:
laws

laws had obtained authority among the people: their minds were impressed with the conviction, that the judge could call forth the combined force of the state, in order to execute his decrees.

WE are furnished with evidence from the ancient Roman laws of the Twelve Tables, that even after the establishment of civil judges, there was no citation or summons issuing from the court, commanding the attendance of any party. The citation was made by private authority. It depended upon the superior strength of the plaintiff or defendant, whether the judge was to pronounce sentence in the case *.

COMMERCIAL dealings must have become frequent, before the authority of courts of justice was sufficiently established to procure obedience to their citations. There is good reason for

* Aul. Gell. Noct. Atticæ.

concluding, that in the infancy of the jurisprudence of all nations, promises, pactions, covenants, and agreements of every denomination, were rendered effectual merely by the efficacy of motives of private convenience and interest. If either of these considerations should, by any of the contracting parties, be found to be wanting, he might refile, or depart from the agreement; which consisting in words, without the intervention of things, was held to be ineffectual, or not deemed worthy of legal compulsion.

THE accounts given by antient authors with regard to the love of justice observed among early societies of mankind, ought to be viewed with caution. For a considerable time after private property is acknowledged, and rights of exclusive use established; a mere regard to the virtues of faith, honesty, and veracity, in civil transactions, has little influence on the minds of rude men. The beauty of those virtues, which are so much cherished, and made the objects of
.. eulogy,

eulogy, in civilized times, does not outweigh, in that state of society which is denominated barbarous, considerations of immediate convenience or profit. The barbarian being improvident with regard to futurity, distant prospects of advantage make but a faint impression upon his mind. Unable or unwilling to carry his reasonings beyond the immediate occurrence, he readily seizes the gratification of the moment, and considers himself as bound by no tie which contributes not to a visible and nearly approaching benefit.

IN civilized society, a promise is as binding upon a man of honour and respectability of character, as an obligation guarded by the most formal solemnities. A faithful adherence to engagements figures so powerfully in the minds of all men who feel in their just extent the relative duties which one citizen owes to another, that a departure from consensual engagements is held to be an unequivocal test of a depraved character,

character, the contamination of which is studiously avoided by every man of fair reputation. The beauties of the virtues of fidelity, integrity, and veracity, can give delight, and be relished as a pure sentimental enjoyment by men of nice perceptions and delicate sentiments, who can sympathise with the self-approved feelings of conscious worth. The dull, the cold, and the phlegmatic confirm, by expressions of approbation, the utility of those moral qualities which constitute rectitude of conduct. Persons of every description combine in bestowing praise on the possessor of those virtues which merit the confidence of men. Whatever qualities mankind, from the natural manners of the particular state of society in which they exist, are disposed to exalt as objects of praise, will in the first degree gain the attention of men of the most valuable characters. The motives which excite a rude man, in the first stages of barbarism, to acquire the reputation of the most distinguished thief and robber, would, in

in refined society, operate upon the same mind as incitements to the practice of the most approved virtues.

WHILE men lived in small communities, enjoying in common the produce of a definite portion of the ground which they possessed, the nature of their condition could give little occasion to any sort of traffic. As soon as subjects of use came to be considered as the property of individuals, that species of commerce which consisted in barter or exchange of commodities, took place. This mode of negotiation made the agreement efficacious at the time it was entered into, as the reciprocal causes of the contract were immediately attended with their designed effect. But a contract which consisted in barely a mutual promise, and amounted only to a verbal agreement, was destitute of the efficacy of what the civilians term a real contract. The utility of enforcing verbal covenants appeared
not

not to be of sufficient magnitude to engage the attention.

THE sense of those so much and so justly prized moral qualities, which preserve civilized society from anarchy and confusion, was inadequate to procure performance of verbal obligations. The Galic language furnishes a curious proof of this proposition. The word used to denote *pledge, deposit, wager, and promise*, is *Geall*. When expressed to signify *promise*, it is pronounced with an aspiration, as if written *Gealla*. The verb *Geall*, which signifies *to promise*, is pronounced without any aspiration. Hence it is evident, that among the antient Celts a promise was not held to be a binding obligation, and that verbal contracts were deemed ineffectual without the intervention of a pledge; so that the obligatory sense of words derived its sole efficacy from the subject pledged in security of performance. This notion

notion of early manners is farther confirmed by the proverbial expression, *Cha chuirar gad air gealla*, "A promise is not to be tied with a withe." The Greek language has also preserved evidence of the inefficacy of verbal obligations. Πίσις signifies *faith* or *confidence*, also *a promise*; and Πισόν signifies *a pledge*; plainly importing the insufficiency of faith in consensual engagements, without the intervention of some subject of real use.

NUMA built a temple to Faith and to Terminus, and taught the Romans, that to swear by Faith was the most solemn of all oaths: "and this oath," says Plutarch*, "they continue to use to this day." Πρῶτον δὲ φασι καὶ Πίσεως καὶ Τέρμονος ἱερὸν ἰδρύσασθαι, καὶ τὴν μὲν Πίσιν ὅρκον ἀποδείξαι Ῥωμαίοις μεγίστον. ὃ χρώμενοι μέχρι νῦν διατελευσιν.

THIS notion of early manners may be farther illustrated by the antient Welsh laws. In Wotton's

* Life of Numa.

collection of these laws it is expressly laid down, that a paction or agreement which took not immediate effect, was of no avail without an arbiter; that is to say, such a paction produced not an action at law for making it effectual. An arbiter is explained to be a person of credit, who was capable of giving testimony concerning the agreement of parties. Whoever, therefore, were disposed to enter into a paction or stipulation binding in law, must have followed a particular solemnity prescribed in all verbal contracts. The contracting parties were ordered to appear before a respectable person as arbiter, or witness of the agreement; and after expressing in his presence the terms of their agreement, they used the ceremony of putting their hands between those of the arbiter, promising in that situation to perform their respective obligations.

“ § 2. QUICUNQUE stipulationem legitimam
“ facere voluerint, invicem congregientur, et
“ pactionem eo quo velint modo præstari expo-
“ nent,

“ nent, et manibus suis inter arbitri manus im-
 “ positis *promittent* se partes suas invicem eo quo
 “ polliciti fuerint modo expleturos.

“ § 3. CAUSA de pactis conventis inutilis est
 “ sine arbitro.”

IN a note, *Arbiter* is explained to be, “ qui
 “ testimonium dare possit pacti initi *.”

IN contracts of greater moment, a more-
 solemn ceremony was used. The parties met
 in a church; and there the junction of hands
 was performed.

“ § 3. SI controversia oriatur de pacto, ad
 “ quod ratum faciendum fidem suam aliquis ad-
 “ strinxerit, lex statuit tale pactum inutile esse
 “ nisi tres manus jungantur in ecclesia; quod
 “ idem de fidejussionibus pro debito et de custo-
 “ dia et exhibitione reorum affirmandum est.

* Leges Wallicæ, lib. II. cap. vi. § 2, 3, de pactis conventis.

“ § 4. ECCLESIAE et regis officium est cogere
 “ homines *pactum Briduw dictum* observare;
 “ cum enim Deus pro sponfore accipiebatur, ideo
 “ ecclesiae est reum excommunicare, et regis est
 “ debitum exigere *.”

THE paction constituted in this solemn manner was called *Briduw*, which, in the glossary annexed to the collection of Welsh laws mentioned above, is explained to be “juramenti
 “ species, quo is qui sub juramento aliquid affirmat, se Christianum esse profitetur, et per
 “ fidem in baptismo professam, se non mentiri.
 “ Nostri dicerent, *swearing by one's faith*.
 “ Usurpatur hæc formula in causis empti et
 “ venditi, &c.”

REGULATIONS concerning fureties and pledges formed a considerable branch of the laws of nations beginning to practise a regular system of

* Leges Wallicæ, lib. II. cap. v. § 3, 4, de contractibus per fidem factis.

jurisprudence. The subject pledged as a security for performance of the terms of a contract, where a surety interposed, was deposited with him. He was intitled, failing the obligor's or debtor's fulfilment of the terms of his agreement, to deliver the pledge to the creditor in satisfaction of the debt: or if no deposit was made in the hand of the surety, he was intitled to seize upon as much of the debtor's effects as would fully satisfy the obligee's claim*.

THE Welsh laws furnish satisfactory evidence, that even after regal authority is established, and a system of ecclesiastical discipline is put in practice, pactions the efficacy of which depended upon future performance, required the united powers of the church and of the state to render them effectual. The simple authority of a civil judge was not sufficient to enforce compliance.

* Leges Wallicæ, lib. II. cap. iv.

WE are inclined to believe, that in the earlier stages of jurisprudence, when a defendant was brought before a judge, and the claim of debt established by proof, something more substantial than a mere verbal decree was necessary to procure satisfaction to the creditor. There is reason for thinking, that the judge's decree was rendered effectual by a deposit, if immediate performance was not in the power of the defendant. The Galic word *Regheall*, which in its present acceptation conveys the same meaning as its Latin derivative *Regula*, rule or order, in its original radical sense signifies *the pledge of agreement*. The sentence* of the judge determined the dif-

* The sentence of a judge is expressed in the Galic language by the word *Bre*, which is a compound of the radical words *Be* and *Re*, signifying *life* and *division*. The word imports literally, *division of life*: in its figurative sense, *division of the means of subsistence*. A judge is hence called *Brethi*; compounded of *Bre*, judgment, and *Ti*, a being or person. In the compound the *t* is quiescent.—*Breag*, in Welsh, denotes *breach of covenant*. In Galic, it is used to signify *a lie*. Its literal signification is, *a departure from judgment*; the word being compounded of *Bre*, judgment, and *Fag*, to leave or to depart. In the compound, *f* is quiescent, and forms *Breag*.

ference

ference between the parties; and the pledge deposited in consequence of that sentence, might with propriety be called *Regheall*. This deposit was productive of order and regularity. Hence is to be derived the common acceptation of the word in the Galic and Latin languages.

It cannot be made matter of doubt, that among men in an age of rude manners disobedience to the sentences of judges was frequent. The arbiter, in whose presence a covenant was made, in the manner we have seen in practice among the antient Welsh, was the judge naturally to be resorted to, in case of variance between the parties in regard to the terms of their agreement. The arbiter's conception of the nature and extent of their obligation, ascertained, in the judgment of the people, the terms of the contract. The party who refused to give effect to the arbiter's testimony and judgment, was held to commit a breach of covenant; which, from the acceptation of the word in the Galic language,

language, we learn was deemed a matter of reproach.

“THE inhabitants of the island of Formosa
“ carry on a traffic with the Chinese. The
“ islanders come to them in boats, and exchange
“ their commodities, taking with the right hand
“ what they are to have, whilst they give with
“ their left their portion to the Chinese; and
“ they are sure not to let go their hold until
“ they are satisfied in the other, so jealous are
“ they of one another*.”

“THE Indians of the Philippine Islands used
“ formerly to swear before a wild beast or a
“ lighted candle; wishing they might be de-
“ voured by such a beast, or consumed like the
“ candle, or be torn to pieces by a crocodile,
“ or swallowed up by the earth, if they broke
“ their promise†.”

* Candidius's Account of the Island of Formosa, in Churchill's Voyages.

† Gemelli Careri's Account of the Philippine Islands. Ibid.

HERODOTUS relates the ceremonies used by the Scythians in their contracts. They poured some wine into an earthen vessel, into which the contracting parties were to mingle some of their own blood, which they drew by a slight incision made in a finger, hand, or some part of their bodies, as they previously agreed. They then dipped into the mixture the point of some warlike weapons, such as a cimeter, arrow, dart, javelin, or battle-axe. The parties then uttered some dire imprecations on the first breaker of the covenant; and each of them having taken a draught of the liquor, they desired some of the most considerable among the by-standers to pledge them, and to be witnesses of the contract; which being usually complied with, the bargain was accounted so sacred, that they thought no punishment severe enough, either in this life or the next, for the breaker of it*.

* Herodot. l. iv. c. 70. Ant. Univers. Hist. book I. chap. xii. §. 6.

MANKIND surrender not without compulsion any portion of their natural freedom. The observations which have been made, tend to establish two propositions: That, in the formation of a regular system of government, the suppression of crimes was the primary object of the attention of the supreme power in the state: and, That the enforcement of civil contracts or agreements was reserved for that period of society, when an exclusive right of property in individuals was well defined and ascertained. A religious creed formed a component part of the first importance in every system of civil policy. The efficacy of both religious and civil institutions united, was necessary to accomplish the entire subjection of the people to the authority of civil laws. Regular obedience to the citations of courts of justice is the strongest test of subjection to government.

FROM those traits which we have observed in the history and manners of early society,
incon-

inconstancy, and want of faith in dealings and contracts of a commercial nature, seem to be characteristic qualities of rude nations. The love of justice sways only the minds of those who have a lively sense of its beauty and utility ; while, even in refined society, the great part of the vulgar are restrained from the violation of justice by fear of the chastisement of the law.

O R I G I N

O F

M A R R I A G E.

TACITUS has given us an account of the *Fenni*, a German nation, as he inclined to think, whose mode of life appeared to be little removed from that of the gregarious animals of the field: “Fennis mira feritas, fœda paupertas, “non arma, non equi, non penates: victui “herba, vestitui pelles, cubile humus. Sola in “sagittis spes, quas inopia ferri ossibus asperant. “Idemque venatus viros pariter ac feminas alit. “Passim enim comitantur, partemque præ pe- “tunt. Nec aliud infantibus ferarum imbrium- “que suffugium, quam ut in aliquo ramorum “nexu contegantur. Huc redeunt juvenes, hoc “senum

“*senum receptaculum**.” This race of people lived chiefly by hunting: their subsistence depended upon their daily acquisitions. They fed partly upon herbs. They clothed themselves with the skins of beasts, and slept upon the ground. Their arrows, being their only weapons, were pointed with bones. They knew not the use of horses. They worshipped no deities. A covering made of boughs sheltered their infants from the weather, and defended them from beasts of prey. These were the receptacles of their young and old of both sexes. The Ichthiophagi, a people of Arabia Felix, went naked. They lived on fish, and dwelt in rude houses made of the bones of fishes and of shells. Their wives and children were in common among them†.

THE accounts given of these nations by antient authors, have obtained no high degree of

* Tac. Germ. c. 46.

† Diodor. Sic. lib. iii. Strabo, lib. xv. Arrian. Hist. Ind.

credit even from the learned of modern times. The existence of human beings living in such a state of wildness, nearly upon a level with the herding animals of the brute creation, has been considered to be more indebted to imagination than to reality.

THE discoveries of modern times have put beyond doubt the existence of societies of the human race living in a similar state with those described by the Greek and Roman authors. The inhabitants of Terra del Fuego, in South America, live in a state nearly similar to the Ichthiophagi, and equally wild and free*.

IN that part of New Holland to which our navigators have given the name of South Wales, "both sexes go stark naked, and seem to have no more sense of indecency in discovering the whole body, than we have in discovering our

* Banks's and Cook's first Voyage.

"hands

“ hands and face. Their skins were so uni-
 “ formly covered with dirt, that it was very
 “ difficult to ascertain their true colour. We
 “ made several attempts, by wetting our fingers
 “ and rubbing it, to remove the incrustation,
 “ but with very little effect. With the dirt,
 “ they appear nearly as black as a negro.
 “ They appeared to have no fixed habitations;
 “ for we saw nothing like a town or village in
 “ the whole country. Their houses, if houses
 “ they may be called, seem to be formed with
 “ less art and industry than any we had seen,
 “ except the wretched hovels at Terra del Fue-
 “ go; and in some respects they are inferior
 “ even to them. At Botany Bay, where they
 “ were best, they were just high enough for a
 “ man to sit upright in, but not large enough
 “ for him to extend himself in his whole length
 “ in any direction. The door is nothing but a
 “ large hole at one end, opposite to which the
 “ fire is made, as we perceived by the ashes.
 “ Under these houses, or sheds, they sleep coiled
 “ up

“ up with their heels to their head. In this posi-
 “ tion, one of them will hold three or four per-
 “ sons. As we advanced northward, and the
 “ climate became warmer, we found these sheds
 “ still more slight. None of them were more
 “ than four feet deep, and one side was entirely
 “ open. Opposite to the open side was the fire.
 “ Under these hovels it is probable that they
 “ thrust only their heads and the upper part of
 “ their bodies, extending their feet towards the
 “ fire. They were set up occasionally, by a
 “ wandering horde, in any place that would fur-
 “ nish them for a time with subsistence, and left
 “ behind them when, after it was exhausted,
 “ they went away; but in places where they
 “ remained only for a night or two, they slept
 “ without any shelter, except the bushes or grass,
 “ which is here near two feet high*.”

* Hawkesworth's Voyages, vol. III. book iii. chap. 8.

WE can no longer reasonably entertain a doubt of the existence of that simplest, and to primitive Man most natural, state of society, in which the human species live promiscuously, without the knowledge of a permanent union between any individuals of the sexes.

CAPT. Cook, in the narrative of his last voyage to the Pacific Ocean, describes that part of New Zealand to which he gave the name of Queen Charlotte's Sound, as uncommonly mountainous, rising immediately from the sea into large hills. At remote distances are vallies, each terminating towards the sea in small coves. The inhabitants live in those coves, sometimes in companies of forty or fifty persons. Their huts are built contiguous to each other. In these they sit down round a small fire, and sleep in the same situation without any other than their daily covering.

THE

THE accounts given by Cæsar* and Dio Cassius, with respect to the community of wives among the antient Britons, have been called in question by some authors. Endeavours have been made by others, to explain them consistently with the ideas of conjugal fidelity of the sexes united according to the divine institution of Christian marriage, or the union of one male with one female.

MEN living in a savage state do not present to the enquirer a like picture of life and manners. There were societies of mankind who originally lived upon roots and herbs solely, and continued to use that sort of subsistence after the multiplication of the species had rendered necessary the arts of cultivation. Animal food is better calculated for cold than for hot climates. Accordingly we find, that the inhabitants of hot

* "Uxores habent deni duo-denique inter se communes, et maxime fratres cum fratribus, parentesque cum liberis."

climates live chiefly, some altogether, upon vegetable diet. This circumstance would have occasioned some variety in the mode of life and manners of mankind living in primeval simplicity. Where the chief subsistence of the human species depends upon the spoils of the chase, or the arts of hunting, the acquisition of food would be effected by the joint efforts of small bands of men; or it would be accomplished by expeditions of single men. The game, or venison, however, would all be brought home for the common use of the society. Where it was necessary to range over a great extent of ground, in pursuit of the necessary means of subsistence, it would be found more eligible for the hunters to pursue their object separately, than in bands, as in this way more game would be found. This circumstance would very naturally give origin to the idea of the union of one male and one female. Marriage would be instituted from motives of utility only.

THOSE

THOSE Indians of America whose sole subsistence depends upon such animal food as they can procure by their skill and dexterity in hunting, may be allowed to live in what is termed the savage state of society. Though not the most simple or least improved state in which the human species have been found to exist, yet they live without any regular form of government, or exclusive property in individuals. Among these Indians, however, the institution of marriage is known: but no male is deemed worthy of entering into the matrimonial state, until he has attained to the age of manhood, and is held to be qualified, as a good hunter, to procure food for one woman and her offspring. When he arrives at that respectable condition, he is, in the opinion of the tribe, bound in duty to undertake the offices of a husband. Every member of the community must bear his share of the burthen of the state. But although there is an apparent union of one man and one woman, it is not the effect of predilection or
favour

favour for any particular female of the tribe. The young Indian feels no concern about the matter. The business is conducted by other members of the tribe, and the marriage is completed with the most perfect indifference on both sides*. The connection raises the female to no new dignity. The parties stand to each other in the station of master and slave. The husband, when not engaged in warlike exercise, indulges himself in idleness, while the wife is subjected to every species of toil and drudgery. The husband frequently leaves the animal he has killed, upon the spot where it fell. The wife must set out, at the command of her master, and trace his footsteps through wayless woods to the place where the game was left; from whence she bears upon her back the ponderous burden to the hut of her husband, who receives it without the smallest degree of commiseration for the unhappy female's distresses.

* Millar's Origin of Ranks, p. 26, third edition.

Thus,

Thus, then, it is evident, that the marriage of the North American Indian is purely an union of policy, unaccompanied with any passion in the least degree allied to feelings of sentimental tendernefs.

AMONG primitive focieties living in a country abounding with vegetable food, it will be found, that the institution of marriage is lefs strictly regarded than in thofe regions of the earth where the means of fubfiftence, confifting of animal food, are to be procured by toil and dexterity. In hot climates the intercourse of the fexes is much more loofe, and lefs fubject to any determinate rule, than in cold climates. In the former, polygamy is ftill found to prevail: a man is allowed to keep as many wives as he can afford to maintain.

WHEN the art of taming cattle is known, and the means of fubfiftence are more amply fecured to favage tribes, the union of the fexes becomes

200 ORIGIN OF MARRIAGE.

becomes more assimilated to the natural usages of the primitive societies of hot climates. In the first stage of this change, the tribe is divided into small communities, such as those of the antient Britons described by Cæsar. Every individual has a common interest in the stock of the society. The utility of a permanent union of one male with one female ceases, and marriage becomes an extremely slender tie*. This step of advancement towards the establishment of property, is a favourable circumstance in the condition of the female sex. Among any number of the human species linked together in one common interest, the institution of marriage, as a contract uniting permanently one male and one female, was neither natural nor necessary.

* By the custom of *Gavelkind* * among the Irish, the inheritance of the deceased, if he were below the degree of a Tanist, was equally divided amongst the sons, whether bastards or legitimate. *Sir James Ware's Antiquities of Ireland*, p. 73.

* With regard to the etymology of this word, writers have held different opinions. Its derivation from the Welsh *Gafael Cennedh*, which imports *the holding or tenure of a tribe*, appears to be just. *Gabbail Cinncadh*, in Galic, conveys the same meaning.

The

The females must be supported by the common stock of the society. To them belong the rearing as well as the bearing of the children of the community. The little hordes move as their cattle change their pastures. The children are left to the care of the women. Their fathers pay them little more than those attentions which are necessary for the preservation of their lives.

“ Omnes enim sine sedibus fixis, absque lare vel
 “ lege, aut ritu stabili dispalantur, semper fugien-
 “ tium similes, cum carpentis in quibus habitant :
 “ ubi conjuges tetra illis vestimenta contexunt, et
 “ coeunt cum maritis, et pariunt et ad usque
 “ pubertatem nutriunt pueros*.”

IN this state of society, women sometimes arrive at a high degree of reverence. The mother of children risen into esteem from the possession of those talents which draw forth the admiration of the barbarian, will be regarded with more than

* Ammian. Marcell. lib. xiv. c. 5. Descript. Hunn. et Alanor.

common respect. The circumstance of a woman's being the mother of male children, will procure to her some degree of general attention. We learn from the history of rude nations, that women have at times acquired great influence and authority among them*.

IN the proportion that men depart from the state of the communion of goods, and come to possess property as a private right, marriage will be held to be an important union, or binding contract, and infidelity will be censured or punished with more or less severity. The institution of marriage figured as an object which claimed the particular attention of the antient legislators and founders of states. Moses decreed certain privileges in favour of a new-married man: "When a man hath taken a new wife, he shall not go out to war, neither shall he

* This subject is treated with much ingenious ability by Dr. Stuart, in his *View of Society in Europe*, and by Mr. Millar, in his *Origin of Ranks*.

“be charged with any business; but he shall be
 “free at home one year, and shall cheer up his
 “wife which he hath taken†.”

By the laws of all civilized nations, the regulation of marriage has been esteemed a matter of the highest importance. Independent of particular civil regulations which have obtained in different nations, the strictness of this union is modified by the ease or difficulty with which the means of subsistence are obtained. In all stages of social existence, those who procure the necessities of life by laborious industry, accompanied with care and assiduity, preserve most entire their fidelity in the matrimonial state. Men possessed of accumulated wealth, if not restrained by feelings of affection, and a sense of duty, or impressed by the utility of complying with the notions of virtue entertained by the great body of the people, are apt to give way to promiscuous enjoyment.

† Deut. chap. xxiv. ver. 5.

IN improved society, mankind are more distinguished by a greater variety of useful qualities, and agreeable talents, than are to be found to exist in times of rudeness and barbarism. Manners are more complicated, and the objects of sentiment more diversified. Various causes of attraction subsist, which were totally unknown to rude ages, or in times of primeval simplicity.

THAT beautiful picture of Eve, which the immortal Milton* describes as Adam's relation to the angel Raphael of his first meeting and nuptials with the mother of human-kind, could have been held up to view, only by the imagination of a poet, who was capable of observing those varieties of graceful embellishments, and qualified to feel the influence of those tender affections, those delicate sentiments of moral duty, which constitute the real ornaments of the human character in civilized society; ornaments

* Paradise Lost, book viii.

which

which are discovered to be happy properties of the human mind, only by the arts of cultivation practised in the ages of improved taste and studied refinement :

Grace was in all her steps, heav'n in her eye,
In ev'ry gesture dignity, and love !

.
Neither her outside form'd so fair, nor aught
In procreation common to all kinds,
So much delights me, as those graceful acts,
Those thousand decencies that daily flow
From all her words and actions, mix'd with love,
And sweet compliance, which declare unfeign'd
Union of mind, or in us both one soul ;
Harmony to behold in wedded pair !
More grateful than harmonious sound to th' ear.

THE powers of art are employed to heighten the native charms of agreeable mental qualities. Nature and art combine their effects to influence the human will. Qualities invisible to one eye, strike another with such force and energy, as to engross the whole powers of the soul, and fascinate the operations of the heart ; as if the human frame were affected by some sweet spell or pleasing enchantment. The arts of elegance
and

and taste in exterior decorations and ornamental beauties, exhibit human forms arrayed in graces and allurements which serve to captivate the senses, and to blunt the perception of that inanity of character so often connected with them; which though discovered, will not always obliterate the delusive beauties of an enchanting figure adorned in the delicacies of taste and refinement of art.

MANKIND, in the earliest stages of society, are destitute of those nice and delicate sensibilities which characterize cultivated minds*. They are universally found to be little concerned about the cleanliness of their persons or of their food†.

* "Cujus rei nulla est occultatio; quod et promiscue in fluminibus perluuntur; et pellibus, aut parvis rhenonum tegumentis utuntur; magna corporis parte nuda." Cæsar de Bello Gallico, lib. vi. cap. 19.

† "Victus asper et munditiis carens." Pompon. Mela. Descript. Africæ interioris.

"In omni domo nudi ac fordidi, in hos artus, in hæc corpora quæ miramur, excrescunt——Inter eadem pecora; in eadem humo degunt; donec ætas separet ingenuos, virtus agnoscat." Tac. Germ. cap. 20.

Guided solely by ideas of immediate convenience, they are unqualified for carrying on any regular train of reasoning, or to provide against future contingencies. Naturally thoughtless, improvident, indolent, immersed in fordidness, insensible to delicate feelings, the union of the sexes among them is, like their other actions, governed by immediate impulse.

AMONG tribes acknowledging the right of exclusive property in individuals, the union of the sexes, though subject to no determinate rule, will assume a new appearance. The preservation of property requires the services of the female as well as of the male part of the society. The interest of both is most successfully promoted by uniting their views of conduct, and their purposes of employment through life. Their union will now be stamped with a sense of duty and permanency. The regulation of it becomes an object of state policy. Religious ceremonies shed their influence,

ence, to render it sacred. The ties of marriage are defined, and the state of children is ascertained. Thus property, and the institution of marriage, mutually confirm each other. Regulations relative to both are found to be equally necessary in the constitution of every civilized society; the health and vigour of which depend upon a respectful observance of those engagements into which mankind enter to gratify their real or imaginary wants and desires.

FINIS.



